

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 138

ROBERT C. JOHNSON, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT**

PETITION FOR CERTIORARI FILED JUNE 18, 1947.

CERTIORARI GRANTED OCTOBER 13, 1947.

No. 11378

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

vs.

ROBERT C. JOHNSON,

Appellee.

ROBERT C. JOHNSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APOSTLES ON APPEAL

**Upon Appeals from the District Court of the United States
for the Southern District of California,
Central Division**

INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	Page
Answer	9
Exhibit A. Service Agreement for Vessels of Which the War Shipping Administration Is Owner or Owner Pro Hac Vice.....	16
Exhibit B. Certificate of Delivery.....	32
Exhibit C. Full Release of All Claims and De- mands	33
Assignment of Errors on Appeal (Johnson).....	308
Assignments of Error on Appeal (United States).....	54
Appeal:	
Assignment of Errors on (Johnson).....	308
Assignments of Error on (United States).....	54
Citation on	2
Notice of	53
Order Allowing (United States).....	52
Order Allowing Cross- (Johnson).....	308
Petition for (Johnson).....	307
Petition for (United States).....	51
Points Upon Which Cross-Appellant Intends to Rely (Circuit Court)	303
Statement of Points and Designation of Parts of Record, Appellant's (Circuit Court).....	304
Certificate of Clerk.....	57

Citation on Appeal.....	2
Final Decree	47
Findings of Fact and Conclusions of Law.....	41
Libel in Personam for Wages, Maintenance, Cure and Damages, First Amended.....	3
Names and Addresses of Proctors.....	1
Notice of Appeal.....	53
Order Allowing Appeal (United States).....	52
Order Allowing Cross-Appeal Without Furnishing Bond or Costs (Johnson).....	308
Order That Certain Exhibits Need Not Be Printed, but May Be Referred to in Their Original Form (Circuit Court).....	306
Petition for Appeal (Johnson).....	307
Petition for Appeal (United States).....	51
Points Upon Which Cross-Appellant Intends to Rely (Circuit Court)	303
Statement of Points and Designation of Parts of Rec- ord, Appellant's (Circuit Court).....	304
Stipulation and Order on Pretrial Conference.....	35
Stipulation and Order re Signing of Appeal papers.....	49
Reporter's Transcript of Proceedings.....	58
Libelant's Exhibits (See Index to Exhibits)	
Respondent's Exhibits (See Index to Exhibits)	
Testimony on Behalf of Libelant:	
Dickerson, Dorrell G.—	
Direct examination	66
Cross-examination	83

Reporter's Transcript of Proceedings (Continued) Page

Testimony on Behalf of Libelant:

Johnson, Clarence—	
Direct examination	157
Cross-examination	163
Johnson, George—	
Direct examination	164
Cross-examination	167
Johnson, Robert C.—	
Direct examination	60
Direct examination (recalled)	88
Cross-examination	126
Direct examination (recalled)	138
Cross-examination	144
Redirect examination	152
Recross-examination	156
Direct examination (rebuttal)	213
Recross examination	220

Testimony on Behalf of Respondents:

Frick, R. L.—

Direct examination	169
Cross-examination	182
Redirect examination	193
Recross-examination	202

Transcript of Oral Opinion of the Court.....	289
--	-----

INDEX TO EXHIBITS.

Libelant's Exhibits:

No.

Page

1. Photograph taken from above the Maccano deck looking forward on the port side (In Evidence) 65
(Omitted from this transcript by order of the Circuit Court—see p. 306)
2. Photograph taken on the port side, looking aft and under about the first athwartship beam of the Maccano deck (For Identification)..... 65
(Omitted from this transcript by order of the Circuit Court—see p. 306)
3. Photograph taken from the well deck, looking forward at the port side just aft of the third athwartship beam (In Evidence)..... 89
(Omitted from this transcript by order of the Circuit Court—see p. 306)
4. Photograph taken from the forecastle head forward on the port side, looking aft (For Identification) 89
(Omitted from this transcript by order of the Circuit Court—see p. 306)
5. Photograph showing the 10-inch block, single sheave (For Identification)..... 90
(Omitted from this transcript by order of the Circuit Court—see p. 306)
6. Photograph taken from the forecastle head, looking aft on the port side (For Identification) 90
(Omitted from this transcript by order of the Circuit Court—see p. 305)

Libelant's Exhibits:

No.

Page

7. Photograph taken from the top of the Maccano deck, about on the fifth athwartship beam, looking forward on the port side, showing the boom nested (For Identification)..... 91
(Omitted from this transcript by order of the Circuit Court—see p. 306)
8. Photograph similar to No. 7. Taken a little bit more to the left (In Evidence)..... 91
(Omitted from this transcript by order of the Circuit Court—see p. 306)
9. Photograph showing same view of the boat as No. 8, but a little more to the port side (For Identification) 91
(Omitted from this transcript by order of the Circuit Court—see p. 306)
10. Photograph taken about on the fifth athwartship beam on top of the Maccano deck, looking forward on the port side (For Identification)..... 92
(Omitted from this transcript by order of the Circuit Court—see p. 306)
11. Photograph showing one of the wire pennants. It is attached to the tip of the boom as it runs aft to the forward block (For Identification).... 92
(Omitted from this transcript by order of the Circuit Court—see p. 306)
12. Photograph taken on the Crater Lake showing various positions on the Maccano deck (For Identification) 93
(Omitted from this transcript by order of the Circuit Court—see p. 306)

Libelant's Exhibits:

No.	Page
13. Photograph taken on the Crater Lake showing the forward davit in approximately the same position as the one was on the Mission Soledad (For Identification)	93
(Omitted from this transcript by order of the Circuit Court—see p. 306)	
14. Reports of Dr. Dorrell G. Dickerson, dated October 17, 1945 and January 20, 1945 (For Identification)	96
(In Transcript)	227
15. Two abstracts from clinical record, covering the period from July 1 to July 6, 1944 (For Identification)	97
(In Transcript)	241
16. Certificate of Discharge, Bearing Date 8/23/44 (In Evidence)	98
(In Transcript)	245
17. Abstract from clinical record, covering the period from August 17 to August 31, 1944 (For Identification)	98
(In Transcript)	247
18. Medical report from the medical service, Division of War Shipping Administration, covering the period from August 23 to October 1, 1944 (For Identification)	99
(In Transcript)	249
19. Abstract from clinical record, covering the period of October 4th and 5th of 1944 (For Identification)	99
(In Transcript)	251

Libelant's Exhibits:

No.	Page
20. Abstract from clinical record covering the period November 30, 1944 (In Evidence).....	99
(In Transcript)	253
21. Abstract from clinical record covering the period January 20, 1945 (For Identification)....	100
(In Transcript)	256
22. Copy of Operations Regulation No. 108 (In Evidence)	143
(In Transcript)	258
23. Receipt from the Central Pharmacy in Sabinal, Texas, dated 10/13/44 (In Evidence).....	153
(In Transcript)	259
24. Seaman's Wage Account (For Identification)....	168
(In Transcript)	260
25. Purser's report of accident (For Identification) 210	
(In Transcript)	262

Respondent's Exhibits:

A. Statement signed by Robert C. Johnson (For Identification)	133
(In Transcript)	263
B. Full release of all claims and demands (In Evi- dence)	133
(In Transcript)	267
C. Check in the amount of \$247.10 (In Evidence)....	134
(In Transcript)	270
D. Statement of wages (For Identification).....	136
(In Transcript)	272

Respondent's Exhibits:	Page .
E. Two receipts for sustenance as maintenance paid to libelant (In Evidence).....	150 .
(In Transcript)	274
F. Computation of repatriation bonus paid to libelant (In Evidence).....	150
(In Transcript)	277
G. Photostatic copy of the 'original' shipping articles (In Evidence).....	151
(In Transcript)	281
Proceedings in U. S. C. C. A., Ninth Circuit	310
Motion for order to take further proof	310
Affidavit of Robert C. Johnson	311
Order of submission	312
Report of Dr. Darrell G. Dickerson	313
Order directing filing of opinion and decree	315
Opinion, Orr, J.	315
Decree	330
Clerk's certificate	331
Order allowing certiorari	332

NAMES AND ADDRESSES OF PROCTORS:

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For Appellee and Cross-Appellant:

DAVID A. FALL

388 West Seyenth Street

San Pedro, Calif. [1*]

CITATION ON APPEAL

UNITED STATES OF AMERICA, ss.

To Robert C. Johnson, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 17 day of July, A. D. 1946, pursuant to an order allowing appeal filed on June 7, 1946, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause No. 3915-H, Central Division, wherein the United States of America is appellant and you are appellee, to show cause, if any there be, why the order, judgment and decree in the said appeal should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Paul J. McCormick, United States District Judge for the Southern District of California, this 7 day of June, A. D. 1946, and of the Independence of the United States, the one hundred and seventieth.

PAUL J. McCORMICK

U. S. District Judge for the Southern District of
California

Service of a copy of the foregoing Citation is acknowledged this 7 day of June, 1946. David A. Fall, Proctor for Robert C. Johnson, Appellee.

[Endorsed]: Filed Jun. 7, 1946. [2]

In the United States District Court
Southern District of California
Central Division

In Admiralty No. 3915 H

ROBERT C. JOHNSON,

Libelant,

vs.

PACIFIC TANKERS, INC., a corporation, UNITED
STATES OF AMERICA and THE UNITED
STATES WAR SHIPPING ADMINISTRA-
TION,

Respondents.

FIRST AMENDED LIBEL IN PERSONAM FOR
WAGES, MAINTENANCE AND CURE AND
DAMAGES

To the Honorable Judges of the District Court of the
United States, Southern District of California, Central
Division:

IN ADMIRALTY

The first amended libel of Robert C. Johnson, against
the Pacific Tankers, Inc., a corporation, the United States
of America and the United States War Shipping Ad-
ministration, in a cause of wages, contract and damage,
maintenance and cure, civil and maritime, respectfully
shows:

FOR A FIRST CAUSE OF ACTION

First: That upon information and belief, at all times
herein mentioned, Pacific Tankers, Inc., a corporation,
were the general agents for the United States of America

and the War Shipping Administration for the ship's business of the S.S. "Mission Soledad," which said vessel was owned and operated by the United [4] States of America, by and through the War Shipping Administration.

Second: That on or about the 23rd day of March, 1944, libelant signed regular shipping articles on the S.S. "Mission Soledad" at the port of Los Angeles, State of California, as an able bodied seaman, for a voyage not to exceed twelve (12) months to unknown foreign ports and return to the United States, and thereupon entered into his duties as a member of the crew of the said S.S. "Mission Soledad."

Third: That libelant is a seaman within the designation of persons permitted to sue herein without furnishing bond for, or prepayment of, or making deposit to secure fees and costs for the purpose of entering into and prosecuting suits conformable to the provisions of Title 28, Sec. 837, U. S. C. A.

Fourth: That at all times herein mentioned libelant was an employee of the United States of America by and through the War Shipping Administration, as an able bodied seaman on board the S.S. "Mission Soledad."

Fifth: That libelant has filed a claim with the Pacific Tankers, Inc., for all matters sued for herein, and that said claim was disallowed on the 29th day of September, 1944, as provided in and in accordance with Public Law

17 of the 78th Congress and General Order No. 32, of the War Shipping Administration of the United States of America.

Sixth: That pursuant to the shipping articles signed by libelant upon the S.S. "Mission Soledad," libelant became entitled to the base pay of \$107.50 per month, overtime and bonus until the termination of the aforesaid voyage of said vessel.

Seventh: That on or about the 30th day of June, 1944, while the libelant herein was performing his duties as an able bodied seaman aboard the S.S. "Mission Soledad," and while engaged in the service of said ship, and while doing his duty and obeying the commands of the Master of the S.S. "Mission Soledad," libelant was [5] struck upon the head by a large block, which was negligently and carelessly dropped by a fellow seaman on the S.S. "Mission Soledad" in the performance of his duties, while said S.S. "Mission Soledad" was at Pearl Harbor, T. H. That as the direct and proximate result of the dropping of the block, as aforesaid, upon the libelant's head and shoulders, libelant sustained a severe concussion of the brain and injuries to his neck, shoulders and spine, and sustained, as the result thereof, severe nervous shock.

Eighth: That as the result of the injuries as aforesaid, libelant was taken to a hospital on Oahu, T. H., and said injuries rendered libelant incapable of continuing on the aforesaid voyage of the S.S. "Mission Soledad."

Ninth: That libelant, by reason of the injuries as aforesaid, will be unable to engage in his duties as an able bodied seaman, or any other employment for a long and indeterminate period of time. That libelant is informed and believes, and therefore alleges that he would have earned the sum of \$1,186.44, upon the S.S. "Mission Soledad," during the voyage for which he signed regular shipping articles upon said vessel, said sum of \$1,186.44 being in excess of all of the monies heretofore paid him and received by him on account of wages upon said S.S. "Mission Soledad," for the voyage as aforesaid.

FOR A SECOND CAUSE OF ACTION

Libelant re-alleges all of the facts set forth in his First Cause of Action herein, as if fully set forth herein, and in addition thereto, respectfully shows and alleges:

Tenth: That by reason of the injuries sustained by libelant as aforesaid, libelant will be unable to follow his employment as an able bodied seaman or any other employment for a long and indeterminate period of time. That by reason thereof libelant has been damaged in the sum of \$10,000.00. [6]

Eleventh: That by reason of the injuries as aforesaid, libelant has been generally damaged in the sum of \$25,000.00.

FOR A THIRD CAUSE OF ACTION

Libelant re-alleges all of the facts set forth in his First Cause of Action, as if fully set forth herein, and in addition thereto respectfully shows and alleges:

Twelfth: That by reason of the injuries as aforesaid, libelant will necessarily be under the care of duly licensed physicians and surgeons for a long and indeterminate period of time for the treatment of his injuries as aforesaid. That libelant has been under the care of duly licensed physicians and surgeons for the treatment of his injuries as aforesaid, from the 1st day of July, 1944 to the date hereof. That libelant is uninformed as to the reasonable value of the services of the physicians and surgeons already incurred and hereafter to be incurred in the treatment of his injuries as aforesaid. That when the reasonable value of said services is ascertained libelant prays to amend this libel by inserting herein the reasonable value of said services.

Thirteenth: That by reason of the injuries as aforesaid, libelant has been required to obtain the services of a sanitarium, and to remain therein, and at this time libelant is uninformed as to the reasonable value of said services, but prays leave to enter the same herein when they are ascertained.

Fourteenth: That libelant claims to be entitled to maintenance in the reasonable sum of \$3.50 per day during the full period of time until he reaches the maximum degree of recovery from the aforesaid injuries, or until

he becomes gainfully employed. That to the date of the filing of this amended libel, libelant claims to be entitled

742.50

to the sum of ~~1,494.00~~.

Wherefore, the libelant prays that a citation in due form of law, according to the course of this Honorable Court in cases of [7] Admiralty and Maritime jurisdiction, may issue against the said respondents Pacific Tankers, Inc., a corporation, the United States of America and the United States War Shipping Administration, and that they may be required to appear and answer on oath this amended libel, and all and singular the matters aforesaid, and that this Honorable Court may be pleased to decree the payment of damages sustained by the libelant in the following sums, to-wit: wages \$1,186.44; loss of future wages \$10,000.00; general damages \$25,000.00,

742.50

and maintenance and cure in the sum of ~~\$1,494.00~~, all in a total sum of \$37,680.44.

DAVID A. FALL

Proctor for Libelant [8]

[Verified.]

[Endorsed]: Filed Nov. 13, 1945. [9]

[Title of District Court and Cause.]

ANSWER OF PACIFIC TANKERS, INC., A CORPORATION, AND THE UNITED STATES OF AMERICA TO THE LIBEL

To the Honorable Judges of the United States District Court for the Southern District of California, Central Division:

The answer of Pacific Tankers, Inc., a corporation, and the United States of America to the libel of Robert C. Johnson in a cause of wages, contract and damage, maintenance and cure; civil and maritime; denies, admits and alleges as follows:

ANSWER TO FIRST ALLEGED CAUSE OF ACTION

I.

Answering the allegations of Article First of the libel, these respondents admit that at all times mentioned in said libel Pacific Tankers, Inc. was, and it now is, a corporation; deny that [11] it was or is the operator or the charterer or the owner pro hac vice of the SS Mission Soledad, but admit that it was and is the general agent of the United States of America to manage the business of the said vessel from time to time. In this connection these respondents allege that the only relationship between said respondent Pacific Tankers, Inc. and the said vessel was the relationship created by and existing under that certain contract made and executed as of May 19, 1943, between the United States of America, acting by and through the Administrator, War Shipping Administration, and said Pacific Tankers, Inc., a copy

of which contract is hereto attached, marked "Exhibit A" and is hereby referred to, incorporated herein and made a part hereof; that said vessel SS Mission Soledad and said parties to said contract were at all times mentioned in said libel subject to and governed by said contract "Exhibit A"; that thereafter, to-wit, on or about January 16, 1944, the said SS Mission Soledad was placed under the terms of said contract "Exhibit A," and a certain certificate of delivery evidencing said fact was executed, a copy of which certificate is hereto attached marked "Exhibit B" and is hereby referred to herein and made a part hereof.

Respondents admit and allege that at all times herein mentioned the said vessel was and it now is owned by the United States of America. These respondents deny that the United States War Shipping Administration was or is the owner of said vessel and in this connection allege that said War Shipping Administration is an agency of the Government of the United States of America and is not suable as a separate entity or at all.

II.

Answering the allegations of Article Second of the libel, these respondents admit that on or about the 25th day of [12] March, 1944, libelant signed regular shipping articles on the SS Mission Soledad at the port of Los Angeles, California, for a voyage to such ports or places as may be ordered and directed by the United States Government or any department, commission or agency thereof, and back to a final port of discharge in the United States, for a term of time not exceeding twelve calendar months. Respondents admit, further, that libelant thereupon entered upon his duties as a member of the

crew of the SS Mission Soledad. Save as herein admitted, these respondents deny the allegations of said Article Second.

IN.

These respondents have no information or belief with respect to the allegations of Article Third of the libel, and accordingly demand proof of the allegations therein contained, if pertinent.

IV.

Answering the allegations of Article Fourth of the libel, these respondents admit that libelant by and through his proctor, wrote a letter on or about September 19, 1944, to United States Lines, as agents for Pacific Tankers, Inc., making demand for the matters sued for herein, and that on or about September 29, 1944, Coastwise (Pacific Far East) Line "As Agents for the United States of America, War Shipping Administration" wrote a letter to libelant's proctor advising that said libelant had executed a full release as of July 31, 1944, and that as libelant was satisfied with the settlement on said date, the file was being closed. Save as herein admitted, these respondents deny the allegations of Article Fourth of the libel.

V.

Answering the allegations of Article Fifth of the libel, [13] these respondents deny the allegations of said article and the whole thereof. In this behalf they allege that pursuant to the said shipping articles, libelant's base pay was \$107.50 per month and not \$167.50 per month, as alleged in said libel, and in this behalf these respondents allege that libelant was paid all wages, overtime and bonus due him when he was paid off the SS Mission Sole-

dad at Pearl Harbor, T. H., to and including July 1, 1944; that he was afforded medical care and treatment while at Honolulu and was paid his subsistence until repatriated by the SS Philippa, on which vessel he was furnished first class transportation from Honolulu to San Francisco; that he was then paid wages in full to July 30, 1944, and a repatriation bonus, which said libelant accepted as payment in full for all wages due.

VI.

Answering the allegations of Article Sixth of the libel, these respondents admit that on or about June 30, 1944, said libelant received an injury to his head while the vessel was at Pearl Harbor, Honolulu, but as to the cause of said injury or the exact nature and extent thereof these respondents are ignorant and accordingly demand proof of all of the allegations in said article in that behalf, if pertinent.

VII.

Answering the allegations of Article Seventh of the libel, these respondents admit that libelant received hospital treatment at Queens Hospital, Honolulu, from on or about July 1, 1944 to on or about July 6, 1944, and that libelant did not continue on the aforesaid voyage of the SS Mission Soledad, but whether said injuries rendered libelant incapable of continuing on said voyage, these respondents are ignorant and demand proof of the allegations in that behalf, if pertinent. [14]

VIII.

Answering the allegations of Article Eighth of the libel, these respondents deny each and every allegation in said article contained and the whole thereof, and in this behalf allege that on July 31, 1944, libelant represented that he had fully recovered from his said injury, and these respondents are informed and believe and on such information and belief allege that libelant had in fact recovered from said injury on said July 1, 1944.

ANSWER TO SECOND CAUSE OF ACTION

These respondents repeat all of the denials, admissions and allegations set forth in their answer to the first alleged cause of action herein, to all intents and purposes as if fully set forth at this point.

IX.

Answering the allegations of Article Ninth of the libel, these respondents deny each and every allegation contained in said article, and the whole thereof.

X.

These respondents deny each and every allegation contained in Article Tenth of the libel and the whole thereof.

ANSWER TO THIRD ALLEGED CAUSE OF ACTION

These respondents repeat all of the denials, admissions and allegations set forth in their answer to the first and second alleged causes of action herein, to all intents and purposes as if fully set forth at this point.

XI.

These respondents, on information and belief, deny each and every allegation contained in Article Eleventh of the libel, and the whole thereof. In this behalf these respondents are informed and believe and therefore allege that libelant, ever since [15] on or about July 31, 1944, has fully recovered from his said injuries.

XII.

These respondents, on information and belief, deny each and every allegation contained in Article Twelfth of the libel, and the whole thereof. In this behalf these respondents are informed and believe and therefore allege that libelant, ever since on or about July 31, 1944, has fully recovered from his said injuries.

XIII.

Answering the allegations of Article Thirteenth, these respondents allege, on information and belief, that libelant has fully recovered from his said injuries and deny that he is entitled to any sum by way of maintenance, or otherwise.

Further Answering Unto the Said Libel and by Way of a Separate and Affirmative Defense to Each of the Three Alleged Causes of Action Set Out Therein, These Respondents Allege:

XIV.

That on or about July 31, 1944, at San Francisco, California, libelant and respondents entered into a com-

promise and settlement of all claims and demands, whereby, in consideration of the sum of \$247.10 then and there paid libelant, libelant signed a full and complete release of all claims and demands against respondents, or any of them; that a copy of said release is hereto attached, marked "Exhibit C" and made a part hereof. At the time said release was executed, the nature and character of said document was fully explained to libelant. No duress of any kind was practiced upon libelant, and said settlement was freely and voluntarily entered into by libelant, with full [16] knowledge and appreciation that he was making a full, final and complete release.

Wherefore These Respondents Pray that libelant take nothing by reason of his said libel, that the said libel may be dismissed, and that these respondents recover their costs, and for such other or further relief as may be appropriate in the premises.

CHARLES H. CARR

United States Attorney

ROBERT E. WRIGHT

Asst. U. S. Attorney

McCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS & GREENE

Proctors for Respondents Pacific Tankers, Inc., and
United States of America

[Verified.] [17]

EXHIBIT A

GAA-Tankers

12-8-42

Contract WSA-4942

SERVICE AGREEMENT FOR VESSELS OF
WHICH THE WAR SHIPPING ADMINISTRA-
TION IS OWNER OR OWNER PRO HAC
VICE

This Agreement, made as of May 19, 1943 between the United States of America (herein called the "United States") acting by and through the Administrator, War Shipping Administration, and Pacific Tankers, Inc., a corporation organized and existing under the laws of Delaware and having its principal place of business at San Francisco, California (herein called the "General Agent").

Witnesseth:

That in consideration of the reciprocal undertakings and promises of the parties herein expressed:

Article 1. The United States appoints the General Agent as its agent and not as an independent contractor, to manage and conduct the business of vessels assigned to it by the United States from time to time.

Article 2. The General Agent accepts the appointment and undertakes and promises so to manage and conduct the business for the United States, in accordance with such directions, orders, or regulations as the latter has prescribed, or from time to time may prescribe, and upon the terms and conditions herein provided, of such vessels as have been or may be by the United States assigned to and accepted by the General Agent for that purpose.

Article 3A. To the best of its ability, the General Agent shall for the account of the United States:

(a) Maintain the vessel in such trade or service as the United States may direct, subject to its orders as to voyages, cargoes, priorities of cargoes, charters, rates of freight and charges, and as to all matters connected with the use of the vessels; or in the absence of such orders, the General Agent shall follow reasonable commercial practices;

(b) Collect all moneys due the United States under this Agreement and deposit, remit, or disburse the same in accordance with such regulations as the United States may prescribe from time to time, and account to the United States for all moneys collected or disbursed by it or its agents;

(c) Equip, victual, supply and maintain the vessels, subject to such directions, orders, regulations and methods of supervision and inspection as the United States may from time to time prescribe;

(d) The General Agent shall procure the Master of the vessels operated hereunder, subject to the approval of the United States. The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary

practices of commercial [18] operators and upon the terms and conditions prevailing in the particular service or services in which the vessels are to be operated from time to time. The officers and members of the crew shall be subject only to the orders of the Master. All such persons shall be paid in the customary manner with funds provided by the United States hereunder.

(e) Issue or cause to be issued to shippers customary freight contracts and bills of lading in the form prescribed by the United States, and prepare manifests and other cargo documents.

Article 3B. The General Agent agrees, without prejudice to its rights under the provisions of Articles 8 and 16 hereof, to:

(a) Perform the duties required to be performed by it hereunder in an economical and efficient manner, and exercise due diligence to protect and safeguard the interests of the United States in all respects and to avoid loss and damage of every nature to the United States;

(b) Exercise due diligence to see that all Bills of Lading are properly issued, all wharf receipts for freight are non-negotiable, and, where required, a freight contract or permit is issued for each shipment;

(c) Furnish and maintain during the period of this Agreement, at its own expense, a bond with sufficient surety, in such amount as the United States shall determine, such bond to be approved by the United States as to both sufficiency of surety or sure-

ties and form, and to be conditioned upon the due and faithful performance of all and singular the covenants and agreements of the General Agent contained in this Agreement, including, without limitation of the foregoing, the condition faithfully to account to the United States for all funds collected and disbursed and funds and property received by the General Agent or its agents. The General Agent may, in lieu of furnishing such bond, pledge direct or fully guaranteed obligations of the United States of America of the face value of the penalty of the bond under an agreement satisfactory in form to the United States;

(d) Without the consent of the United States, not sell, assign or transfer, either directly or indirectly or through any reorganization, merger or consolidation, this Agreement or any interest therein, nor make any agreement or arrangement whereby the service to be performed hereunder is to be performed by any other person, whether an agent or otherwise, except as provided in Article 6 hereof.

Article 4. (a) The General Agent and, to the extent required by the United States, every related or affiliated company or holding company of the General Agent, authorized as provided in Article 13 hereof, to render any service or to furnish any stores, supplies, equipment, provisions, materials, or facilities which are for the account of the United States under the terms of this Agreement, shall (1) keep its books, records and accounts relating to the management, operation, conduct of the business of and maintenance of the vessels covered by this Agree-

ment in such form [19] and under such regulations as may be prescribed by the United States; and (2) file, upon notice from the United States, balance sheets, profit and loss statements, and such other statements of operation, special reports, memoranda of any facts and transactions, which, in the opinion of the United States, affect the results in, the performance of, or transactions or operations under this Agreement.

(b) The United States is hereby authorized to examine and audit the books, records and accounts of all persons referred to above in this Article whenever it may deem it necessary or desirable.

(c) Upon the willful failure or willful refusal of any person described in this Article to comply with the provisions of this Article, the United States may rescind this Agreement.

Article 5. At least once a month the United States shall pay to the General Agent as full compensation for the General Agent's services hereunder, such fair and reasonable amount as the Administrator, War Shipping Administration, shall from time to time determine. Such compensation shall be deemed to cover, but without limitation, the General Agent's administrative and general expense (as presently itemized in General Order No. 22 of the United States Maritime Commission), advertising expense, taxes (other than taxes for which the General Agent is reimbursed under Article 7. hereof), and any other expenses which are not directly and exclusively applicable to the maintenance, management, operation or the conduct of the business of the vessels hereunder.

Article 6. The General Agent shall exercise due diligence in the selection of agents. Such agents shall be sub-

ject to disapproval by the United States and any agency agreement shall be terminated by the General Agent whenever the United States shall so direct. Any compensation payable by the General Agent to its agents for services rendered in connection with the vessels assigned hereunder shall be subject to approval by the United States. Agency fees or equivalent allowances for branch offices in accordance with schedules approved by the United States will be reimbursable under Article 7 hereof.

Article 7. The United States shall reimburse the General Agent at stated intervals determined by the United States for all expenditures of every kind made by it in performing, procuring or supplying the services, facilities, stores, supplies or equipment as required hereunder, excepting general and administrative expense (as presently itemized in General Order No. 22 of the United States Maritime Commission), advertising expense, taxes (other than sales and similar taxes or foreign taxes of any kind to the extent determined by the United States to be classifiable as voyage expenses hereunder) and any other expenses which are not directly and exclusively applicable to the maintenance, management, operation or the conduct of the business of the vessels hereunder. The General Agent shall be reimbursed for sales and similar taxes or foreign taxes of any kind to the extent determined by the United States to be classifiable as voyage expenses hereunder if the General Agent shall have used due diligence to secure immunity from such taxation. To the extent not recovered from insurance, the United States shall also reimburse the General Agent for all crew expenditures (accruing during the term hereof)

in connection with the vessels hereunder, including, without limitation, all disbursements for or on account of wages, extra compensation, overtime, bonuses, penalties, subsistence, repatriation, travel expense, loss of [20] personal effects, maintenance, cure, vacation allowances, damages or compensation for death or personal injury or illness, and insurance premiums, required to be paid by law, custom, or by the terms of the ship's articles or labor agreements, or by action of the Maritime War Emergency Board, any payments made by the General Agent to a pension fund in accordance with a pension plan in effect on the effective date of this Agreement with respect to the officers and members of the crew of said vessels who are entitled to benefits under such plan, on the effective date of this Agreement, for the amount of any Social Security taxes which the General Agent is or may be required to pay on behalf of the officers and crew of said vessels as agent or otherwise. The United States may disallow, in whole or in part, as it may deem appropriate, and deny reimbursement for, expenses which are found to have been made in willful contravention of any outstanding instructions or which were clearly improvident or excessive.

Any moneys advanced to bonded persons by the General Agent for ship disbursements which are lost by reason of a casualty to the Vessel on which the money so advanced is carried shall in the event of such loss be considered an expense of the General Agent, subject to reimbursement as is in this Article 7 provided.

The United States may advance moneys to the General Agent to provide for disbursements hereunder in accord-

ance with such regulations or conditions as the United States may from time to time prescribe.

Article 8. The United States shall, without cost or expense to the General Agent, procure or provide insurance against all insurable risks of whatsoever nature or kind relating to the vessels assigned hereunder (which insurance shall include the General Agent and the vessel personnel as assureds) including, but without limitation, marine, war and P. & I. risks, and all other risks or liabilities for breach of statute and for damage cause to other vessels, persons or property, and shall defend, indemnify and save harmless the General Agent against and from any and all loss, liability, damage and expense (including costs of court and reasonable attorneys' fees) on account of such risks and liabilities, to the extent not covered or not fully covered by insurance. The General Agent shall furnish reports and information and comply fully with all instructions that may be issued with regard to all salvage claims, damages, losses or other claims. Neither the United States nor the insurance underwriters shall have any right of subrogation against the General Agent with respect to such risks. The United States may assume any of the foregoing risks except those relating to P. & I. risks and collision liabilities. At all times during the period of this Agreement, the United States shall at its own expense provide and pay for insurance with respect to each vessel hereunder against protection and indemnity marine and war risks, and collision liabilities without limit as to liability as to the amount of any claim or the aggregate of any claims thereunder. The United States, at its election may write all or any such insurance, including that against P. and I. and col-

lision liabilities, in its own fund, pursuant to a duly executed policy or policies. Neither the United States nor the insurance underwriters shall have any right of subrogation against the General Agent with respect to any of the foregoing risks. All insurance hereunder shall cover both the United States and the General Agent. [21]

Article 9. In the event of general average involving vessels assigned to the General Agent under this Agreement, the General Agent shall comply fully with all instructions issued by the United States in that connection including instructions as to the appointment of adjuster, obtaining general average security and asserting liens for that purpose unless otherwise instructed, and supplying the adjuster with all disbursements accounts, documents and data required in the adjustment, statement and settlement of the general average. Reasonable compensation for and general average allowances to the General Agent in such cases shall be in accordance with directions, orders or regulations of the United States.

Article 10. Salvage claims for services rendered to vessels other than vessels owned or controlled by the United States shall be handled by, and be under the control of, the United States. Salvage awards for services rendered to other vessels owned or controlled by the United States including the vessels hereunder shall be made by the United States. The General Agent shall furnish the United States with full reports and information on all salvage services rendered.

Article 11. (a) The United States shall have the right to terminate this Agreement at any time as to any and all vessels assigned to the General Agent and to assume con-

trol forthwith of any and all said vessels upon fifteen (15) days' written or telegraphic notice.

(b) Upon giving to the United States thirty (30) days' written or telegraphic notice, the General Agent shall have the right to terminate this Agreement, but termination by the General Agent shall not become effective as to any vessel until her arrival and discharge at a continental United States port.

(c) This Agreement may be terminated, modified, or amended at any time by mutual consent.

Article 12. In case of termination of this Agreement, whether upon expiration of the stated period hereof or otherwise, all vessels and other property of whatsoever kind then in the custody of the General Agent pursuant to this Agreement, shall be immediately turned over to the United States, at times and places to be fixed by the United States, and the United States may collect directly, or by such agent or agents as it may appoint, all freight moneys or other debts remaining unpaid: Provided, That the General Agent shall, if required by the United States, adjust, settle and liquidate the current business of the vessels. Notwithstanding the foregoing provisions, when the United States shall so direct, the General Agent shall complete the business of voyages commenced prior to the date as of which the Agreement shall be terminated, and, if directed by the United States and subject to any instructions issued by the United States with respect thereto, the General Agent shall continue to book cargo for the vessels for the next voyages after the termination of this Agreement. No such termination of this Agreement shall relieve either party of liability to the

other in respect of matters arising prior to the date of such termination or of any obligation hereunder, to indemnify the other party in respect of any claim or demand thereafter asserted, arising out of any matter done or omitted prior to the date of such termination. [22]

Article 13. Agreements or arrangements with any interested or related company to render any service or to furnish any stores, supplies, equipment, materials, repairs, or facilities hereunder shall be submitted to the United States for approval as to employment. Unless and until such agreements or arrangements have been approved by the United States, compensation paid to any interested or related company shall be subject to review and readjustment by the United States. In connection with such review and readjustment, the United States may deny reimbursement hereunder of any portion of such compensation which it deems to be in excess of fair and reasonable compensation. The United States may also deny reimbursement, in whole or in part, of compensation under any arrangement or agreement with an interested or related company which it deems to be exorbitant, extortionate or fraudulent. The term "interested company" shall mean any person, firm, or corporation in which the General Agent, or any related company of the General Agent, or any officer or director of the General Agent, or any employee of the General Agent who is charged with executive or supervisory duties, or any member of the immediate family of any such officer, director or employee, or any officer or director of any related company of the General Agent or any member of the immediate family of an officer or director of any related company of the General Agent, owns any substantial pecuniary in-

terest directly or indirectly. The term "related company," used to indicate a relationship with the General Agent for the purposes of this Article only, shall include any person or concern that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the General Agent. The term "control" including the terms "controlled by") and "under common control with") as used herein means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the General Agent (or related company), whether through ownership of voting securities, by contract, or otherwise.

Article 14. The General Agent shall, unless otherwise instructed, subject to such regulations, instructions, or methods of supervision and inspection as may be required or prescribed by the United States, arrange for the repair of the vessels, covering hull, machinery, boilers, tackle, apparel, furniture, equipment, and spare parts, and including maintenance and voyage repairs and replacements, for the account of the United States, as may be necessary to maintain the vessels in a thoroughly efficient state of repair and condition. The General Agent shall exercise reasonable diligence in making inspections and obtaining information with respect to the state of repair and condition of the vessels, and so advise the United States from time to time, in order that the United States may satisfy itself that the vessels are being properly maintained, and shall cooperate with representatives of the United States in making any inspections or investigations that the United States may deem desirable.

Article 15. The United States shall, when it may legally do so, have the advantage of any existing, or

future, contracts of the General Agent for the purchase or rental of materials, fuel, supplies, facilities, services, or equipment, if this may be done without unreasonably interfering with the requirements of other vessels owned or operated by the General Agent.

Article 16. (a) The United States shall indemnify, and hold harmless and defend the General Agent against any and all claims and demands (including costs and reasonable attorneys' [23] fees in defending such claim or demand, whether or not the claim or demand be found to be valid) of whatsoever kind or nature and by whomsoever asserted for injury to persons or property arising out of or in any way connected with the operation or use of said vessels or the performance by the General Agent of any of its obligations hereunder, including but not limited to any and all claims and demands by passengers, troops, gun crews, crew members, shippers, third persons, or other vessels, and including but not limited to claims for damages for injury to or loss of property, cargo or personal effects, claims for damages for personal injury or loss of life, and claims for maintenance and cure.

(b) In view of the extraordinary wartime conditions under which vessels will be operated hereunder, the General Agent shall be under no responsibility or liability to the United States for loss or damage to the vessels arising out of any error of judgment or any negligence on the part of any of the General Agent's officers, agents, employees, or otherwise. However, the General Agent may be held liable for loss or damage not covered by insurance or assumed by the United States as required under Article 8 of this Agreement, if such loss or damage

is directly and primarily caused by willful misconduct of principal supervisory shoreside personnel or by gross negligence of the General Agent in the procurement of licensed officers or in the selection of principal supervisory shoreside personnel.

(c) In the event that the General Agent shall perform any stevedoring, terminal, ship repair or similar service for the vessels hereunder at commercial rates, the General Agent shall have all the obligations and responsibilities of the person performing such services under the standard or other approved form of contract with the United States or, in the absence of such standard or approved form, under usual commercial practice.

(d) The General Agent shall be under no liability to the United States of any kind or nature whatsoever in the event that the General Agent should fail to obtain officers or crews for the operation of the vessels, or fail to arrange for the fitting out, refitting, maintenance or repair of said vessels, or fail to perform any other service hereunder by reason of any labor shortage, dispute or difficulty, or any strike or lockout or any shortage of material or any act of God or peril of the sea or any other cause beyond the control of the General Agent whether or not of the same or similar nature; or shall do or fail to do any act in reliance upon instructions of military or naval authorities.

Article 17. Wherever and whenever herein any right, power, or authority is granted or given to the United States, such right, power, or authority may be exercised in all cases by the War Shipping Administration or such agent or agents as it may appoint or by its nominee, and the act or acts of such agent or agents or nominee, when

taken, shall constitute the act of the United States hereunder. In performing its services hereunder, the General Agent may rely upon the instructions and directions of the Administrator, his officers and responsible employees, or upon the instructions and directions of any person or agency authorized by the Administrator. Wherever practicable, the General Agent shall request written confirmation of any oral instructions or directions so given. [24]

Article 18. (a) The General Agent warrants that it has not employed any person to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the United States the right to annul this Agreement or in its discretion to deduct from any amount payable hereunder the amount of such commission, percentage, brokerage or contingent fee.

(b) In any act performed under this Agreement, the General Agent and any subcontractor shall not discriminate against any citizen of the United States on the ground of race, creed, color or national origin.

Article 19. No person elected or appointed a member of or delegate to Congress or a Resident Commissioner, directly or indirectly, himself or by any other person in trust for him, or for his use or benefit, or on his account shall hold or enjoy this Agreement in whole or in part, except as provided in Section 206, Title 18, U. S. C. The General Agent shall not employ any member of Congress, either with or without compensation, as an attorney agent, officer or director.

Article 20. This Agreement, unless sooner terminated, shall extend until six months after the cessation of hostilities.

In Witness Whereof, the Parties hereto have executed this Agreement in triplicate the day and year first above written.

UNITED STATES OF AMERICA

By: E. S. LAND, Administrator
War Shipping Administration

By: A. J. WILLIAMS
For the Administrator

PACIFIC TANKERS, INC.

By: K. D. DAWSON
President

(Seal) Attest:

J. W. PARKER
Secretary

Approved as to form:

FRANK J. ZITO
Asst. General Counsel
War Shipping Administration

TMT

Beach [25]

I, J. W. Parker, certify that I am the duly chosen, qualified, and acting Secretary of Pacific Tankers, Inc., a party to this Agreement, and, as such, I am the custodian of its official records and the minute books of its governing body; that K. D. Dawson who signed this Agreement on behalf of said corporation, was then the duly qualified president of said corporation; that said officer affixed his manual signature to said Agreement in his official capacity as said officer for and on behalf of said corporation by authority and direction of its gov-

erning body duly made and taken; that said Agreement is within the scope of the corporate and lawful powers of this corporation..

(Seal)

J. W. PARKER

Secretary [26]

EXHIBIT B

WAR SHIPPING ADMINISTRATION

January 16, 1944

* This Is To Certify That the SS. "Mission Soledad" owned by the United States of America, represented by the War Shipping Administrator, was on the 16th day of January, 1944, at 12:00 Noon M., Pacific War Time, delivered at the Port of Sausalito, California, by the War Shipping Administrator to Pacific Tankers, Inc. under terms and conditions of Service Agreement Form GAA, Contract WSA-4942, said Agreement having been executed as of May 19, 1943, having on board fuel, water, stores and equipment as per inventories taken on the date of delivery.

As Agent for War Shipping Administrator

L. C. FLEMING

L. C. Fleming

Area Administrative Officer

As Agent for Pacific Tankers, Inc.

JOHN MAHONEY

John Mahoney

General Manager

(D)-(GAA) [27]

EXHIBIT C

Copy

Do not sign this unless you fully understand its contents—
This is a

FULL RELEASE OF ALL CLAIMS AND
DEMANDS

To All to Whom These Presents Shall Come or May
Concern, Greeting:

Know Ye, that I, Robert C. Johnson, the undersigned, for and in consideration of a net sum of Two Hundred Forty-seven and 10/100 (\$247.10) Dollars, the receipt whereof is hereby acknowledged, have remised, released and forever discharged and by these presents do for myself, my heirs, executors, administrators, and assigns, remise, release and forever discharge Pacific Tankers, Inc., and United States of America, acting by and through the Administrator, War Shipping Administration, and its General Agents and Agents under Service Agreements, Berth Agents and Sub-Agents acting on their behalf, and Owners and in particular the vessel S.S. "Mission Soledad," its engines, boilers, tackle, apparel and furniture, its owners, operators, charterers, lessees, managers, officers, and crew, and each of them and all persons, firms and corporations having any interest in or to said vessel, of any from any and all claims and demands of any and every kind, name, nature or description, and from Any and All Damages, injuries, actions or causes of action, either at law, in equity, or in admiralty, which I now have or in the future may have against it or them or any of them, including any and all claims or demands for wages, maintenance, cure, compensation, reimbursement, transportation, sustenance, or expense under any

law or duty imposed by any law of the United States of America, or any State thereof, or for any other account, whether or not the same be now existent or known to me or whether it later develops or becomes existent or known to me in the future, by reason of or arising out of personal injuries sustained by me on or about the 30th day of June, 1944, while in the employ of said vessel [28] and/or its owners and/or its agents at Pearl Harbor, T. H., when the undersigned sustained injuries to head, and other severe bodily injuries.

The undersigned does hereby affirm and acknowledge that he has read over the foregoing Release and has had the same fully explained to him and fully understands and appreciates the foregoing words and terms and their effect, and being entirely satisfied with the settlement herein made, has affixed his signature hereto voluntarily and of his own free will and accord.

ROBERT C. JOHNSON

Full Release of All Claims

Witnessed by:

Jeanne Slotte

Do you understand that signing this paper settles and ends Every claim for Damages, as well as for compensation, maintenance, cure and wages? Answer Yes.

(Claimant may write here either "yes" or "no", according to his understanding.)

Dated July 31, 1944

ROBERT C. JOHNSON

Full Release of All Claims [29]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Nov. 20, 1944. [30]

In the United States District Court
Southern District of California
Central Division.

In Admiralty No. 3915-H

ROBERT C. JOHNSON,

Libelant,

vs.

UNITED STATES OF AMERICA and THE UNITED
STATES WAR SHIPPING ADMINISTRA-
TION,

Respondents.

STIPULATION AND ORDER ON PRETRIAL CONFERENCE

At a pretrial hearing of the above entitled libel, and at a subsequent conference, proctor for libelant and proctors for respondents have made and entered into the following stipulations and admissions as to the facts and issues involved in this libel:

FACTS

On March 25, 1944, at the port of Los Angeles, the libelant, Robert C. Johnson, signed regular shipping articles (photostatic copy of which is marked for identification as "Respondent's Exhibit N") on the SS Mission Soledad as an able-bodied seaman at a base wage of \$107.50 per month and bonuses as prescribed by the decisions of the Maritime War Emergency Board, for a voyage to unstated ports and return to a final port of discharge in the United States, for a term not to exceed twelve months. [31] The SS Mission Soledad is owned

and operated by the United States through its agency, the War Shipping Administration. On June 30, 1944, while the vessel was at Pearl Harbor, T. H., libelant was performing duties aboard the ship and sustained an injury when a block, which was being removed by a man working above libelant, fell, striking libelant on the back of the head. Libelant alleges that this accident was due to the negligence of the ship and respondent denies that such injuries were caused by any negligence of the respondent. The nature and extent of the injuries are at issue. Libelant received first aid treatment aboard the ship and at the United States Naval Base, and on July 1, 1944 was admitted to the Queen's Hospital, Honolulu, where he stayed until July 5, 1944. Libelant received treatment by the United States Public Health Service in the hospital and outpatient care on July 6, 1944. Abstracts from the clinical record of the United States Public Health Service at Honolulu are marked for identification as "Libelant's Exhibits 1 and 6." At Honolulu he was paid by respondent the sum of \$747.45, which was the total amount of wages, overtime and bonus earned by him for work on the ship during the period from March 25, 1944 to July 1, 1944. Libelant's receipt for such payment is marked for identification as "Respondent's Exhibit L." The SS Mission Soledad left Pearl Harbor on July 2, 1944. On July 15, 1944 libelant was paid maintenance in the amount of \$22.00 for the period from July 5, 1944 to July 15, 1944, inclusive, and on July 21, 1944 he was paid maintenance in the amount of \$14.00 for the period from July 16, 1944 to July 22, 1944, inclusive. Receipts for such payments are marked "Respondent's Exhibits F and G," for identification, respectively. On July 22, 1944 libelant left Honolulu aboard

the SS Philippa as a passenger, arriving in San Francisco on July 30, 1944. Respondent [32] paid for libelant's passage. At San Francisco the libelant was paid repatriation bonus in the amount of \$17.33 for the period the libelant was on the SS Philippa from July 22, 1944 to July 30, 1944. This payment was the amount of bonus money libelant would have earned had he been a crew member during such passage. His receipt for such payment is marked for identification as "Respondent's Exhibit H." Libelant's base wage, according to the Articles of the SS Mission Soledad, for the period from July 2, 1944 to July 30, 1944 inclusive, amounted to \$103.92. Libelant signed the typewritten statement marked for identification as "Respondent's Exhibit E." Upon payment of the sum due for base wages to July 30, 1944, together with additional sum of \$150.00, libelant executed the Release marked for identification as "Respondent's Exhibit C." The original draft in the amount of \$247.10, marked for identification as "Respondent's Exhibit D," represents said payments less deductions for taxes. The discussion preceding the statement and the facts surrounding the execution of this release and its legal effect are at issue.

Libelant subsequently went to San Diego to see his parents. He later went to the United States Public Health Service at Los Angeles and was given hospital care from August 17th to August 23, 1944; and outpatient care thereafter until August 31, 1944. Abstract from clinical record covering this period is marked for identification as "Libelant's Exhibit 4." Certificate of discharge from the hospital is marked for identification as "Libelant's Exhibit 2." Libelant was then confined from August 23, 1944 to October 1, 1944 at Pacific Palisades Rest Center.

Abstract covering this period is marked for identification as "Libelant's Exhibit 8." Upon discharge from the Pacific Palisades Rest Home, libelant returned to San Diego where he received [33] outpatient care at the United States Public Health Service from October 4 to October 5. The abstract from clinical record covering this treatment is marked for identification as "Libelant's Exhibit 3." Shortly thereafter libelant went to Sabinal, Texas. On November 30th he went to the United States Public Health Service at Galveston, Texas. Abstract of clinical record of this examination is marked for identification as "Libelant's Exhibit 7." Libelant consulted Dr. Earl Woods in Sabinal, Texas, and remained in that town until the early part of January, 1945, when he returned to San Diego. On January 20th he was examined by the United States Public Health Service of San Diego. Abstract of clinical record of this examination is marked for identification as "Libelant's Exhibit 5."

Respondent requested information from the United States Public Health Service at Honolulu and the reply of Dr. George F. Ellinger, dated April 6, 1945, is marked for identification as "Respondent's Exhibit I." Libelant was examined by Dr. D. G. Dickerson of Los Angeles on or about January 20, 1945. Dr. Dickerson's report is marked for identification as "Respondent's Exhibit J."

The voyage of the SS Mission Soledad, for which libelant signed on, terminated on November 14, 1944 at Baltimore, Maryland. A statement of the anticipated earnings of an able-bodied seaman doing work similar to libelant's from July 2, 1944 to November 14, 1944 is marked for identification as "Respondent's Exhibit K." A statement of bonus that libelant would have earned

had he remained on board the SS Mission Soledad during July, 1944 is marked for identification as "Respondent's Exhibit M." Libelant, by his attorney, filed a claim on September 20, 1944 with Pacific Tankers, Inc., agents for the United States and the War Shipping Administration, and said claim was disallowed on September 29, 1944. [34]

ISSUES

I.

Respondent has set up the defense that the release executed on July 31, 1944 by the libelant is a complete defense to this libel. The facts surrounding the execution of the release are in issue. Libelant claims that the release is invalid due to coercion, that he had no knowledge of the extent of his injuries, that respondent misrepresented the amounts due him on the date of its execution, that he was incompetent to execute such release, and that the amount paid libelant was inadequate.

Respondent contends that a full and complete discussion of libelant's claim was had, that libelant was fully competent and rational and understood the transaction, that the consideration was fair and adequate and that he was in no way coerced and that his agreement to settle this matter was his free and voluntary act.

II.

If the Court finds adversely to the respondent on the issues of the validity of the release, the following issues would be presented in a trial on the merits:

1. Whether the accident was due to negligence of the respondent.
2. The nature and extent of the disability and its causal connection with the accident.

3. The respondent's liability for and the extent of:
 - a. Maintenance and cure;
 - b. Wages and bonus to the end of the voyage;
 - c. Damages for loss of wages subsequent to the end of the voyage;
 - d. General damages for pain and suffering. [35]

It is Stipulated and Agreed that the subsequent course of this libel be controlled by the foregoing unless modified at the trial to prevent manifest injustice.

Dated at Los Angeles, California, this 31 day of May, 1945.

DAVID A. FALL

Proctor for Libelant

Charles H. Carr

United States Attorney

ROBERT E. WRIGHT

Assistant United States Attorney

MCCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS & GREENE

Proctors for the United States of
America, Respondent

After pretrial hearing and upon the stipulation of the proctors for the libelant and the respondent, it appears that the subsequent course of this libel should be controlled as to issues of fact and law by the foregoing stipulation, unless modified at the trial thereof to prevent manifest injustice.

It Is So Ordered.

Dated May 31, 1945.

H. A. HOLLZER

United States District Judge

[Endorsed]: Filed May 31, 1945. [36].

In the United States District Court
Southern District of California
Central Division

In Admiralty No. 3915-H

ROBERT C. JOHNSON,

Libelant,

vs.

PACIFIC TANKERS, INC., a corporation, UNITED
STATES OF AMERICA and THE UNITED
STATES WAR SHIPPING ADMINISTRATION,

Respondents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled action came on regularly for trial on the 25th day of February, 1946, before Honorable C. C. Cavanah, United States District Judge, the libelant being represented by David A. Fall, Esquire; respondents, United States of America and Pacific Tankers, Inc., being represented by Charles H. Carr, Esquire, United States Attorney, and McCutchen, Thomas, Mathew, Griffiths & Greene, by George Toner, Esquire; and evidence, oral and documentary, having been introduced and the Court having considered the evidence and the law and arguments of counsel, and being fully advised in the premises, and all proceedings having been duly and regularly taken, the Court makes the following findings of fact and conclusions of law: [37]

FINDINGS OF FACT

I.

That paragraphs First, Second, Third, Fourth and Fifth of libelant's First Cause of Action are true.

That it is true that at all times herein mentioned, Pacific Tankers, Inc., a corporation, were the general agents for the United States of America and the War Shipping Administration for the ship's business of the S.S. "Mission Soledad," which said vessel was owned and operated by the United States of America, by and through the War Shipping Administration.

II.

That it is true that on or about the 23rd day of March, 1944, libelant signed regular shipping articles on the S.S. "Mission Soledad" at the port of Los Angeles, State of California, as an able-bodied seaman, for a voyage not to exceed twelve (12) months, to unknown foreign ports and return to the United States, and thereupon entered into his duties as a member of the crew of the S.S. "Mission Soledad."

III.

That it is true that libelant is a seaman within the designation of persons permitted to sue herein without furnishing bond for, or prepayment of or making deposit to secure fees and costs for the purpose of entering into and presecuting suits conformable to the provisions of Title 28, Sec. 837, U. S. C. A.

IV.

That it is true that at all times herein mentioned libelant was an employee of the United States of America

by and through the War Shipping Administration, as an able bodied seaman on board the S.S. "Mission Soledad."

V.

That it is true that libelant has filed a claim with the Pacific Tankers, Inc., for all matters sued for herein, and that [38] said claim was disallowed on the 29th day of September, 1944, as provided in and in accordance with Public Law 17 of the 78th Congress and General Order No. 32 of the War Shipping Administration of the United States of America.

VI.

That pursuant to the shipping articles signed by libelant upon the S.S. "Mission Soledad," libelant became entitled to the base pay of \$107.50 per month and overtime; and bonus in addition pursuant to the regulations of the War Shipping Administration.

VII.

That it is true that on or about the 30th day of June, 1944, while the libelant herein was performing his duties as an able-bodied seaman aboard the S.S. "Mission Soledad," and while engaged in the service of said ship, and while doing his duty and obeying the commands of the Master of the S.S. "Mission Soledad," libelant was struck upon the head by a large block, which was negligently and carelessly dropped by a fellow seaman on the S.S. "Mission Soledad" in the performance of his duties, while said S.S. "Mission Soledad" was at Pearl Harbor, T. H. That as the direct and proximate result of the dropping of the block, as aforesaid, upon the libelant's head and shoulders, libelant sustained a severe concussion of the

brain and injuries to his neck, shoulders and spine, and sustained, as the result thereof, severe nervous shock.

VIII.

That it is true that as the result of the injuries as aforesaid, libelant was taken to a hospital on Oahu, T. H., and said injuries rendered libelant incapable of continuing on the aforesaid voyage of the S.S. "Mission Soledad."

IX.

That it is true that libelant, by reason of the injuries as aforesaid, has been continuously totally disabled from the 30th [39] day of July, 1944 to this date and will be unable to engage in his duties as an able-bodied seaman, or any other employment for a long period of time. That it is true that libelant would have earned the sum of \$863.37, upon the S.S. "Mission Soledad," \$480.17 of which would have been straight time.

X.

That it is true that by reason of the injuries sustained by libelant, as aforesaid, libelant has been damaged in the
\$557.60
sum of \$8,400.00 by reason of his being unable to resume his employment.

XI.

That it is true that by reason of the injuries, as aforesaid, libelant has sustained damages in the sum of \$7,500.00 in general damages for pain and suffering.

XII.

That it is true that libelant is entitled to maintenance in the sum of \$3.50 per day from July 5, 1944 to and in-

cluding July 23, 1944, upon which he has been paid by respondents the sum of \$36.00, and there is a balance of \$27.00 due him for maintenance for this period of time. That it is true that libelant is entitled to maintenance in the sum of \$3.50 per day from July 30, 1944 to August 1st, 1944 inclusive, or a sum of \$10.50. That it is true that libelant's maintenance from August 2nd to August 18th, 1944, inclusive, and from October 1, 1944 to and including February 15, 1946 was paid for by his parents, although libelant, now of the age of twenty-seven (27) years was totally disabled by reason of said injuries as aforesaid, and still remains so disabled, ~~and during which period libelant was without funds to defray his maintenance, and during which period respondent refused to pay his said maintenance although War Shipping Administration regulation No. 108 required respondent to pay libelant the same.~~ That it is true that libelant is entitled to recover the sum of \$22.52, the cost of his repatriation to the Port of Los Angeles, from San Francisco, California. [40]

XIII.

That it is true that the respondents are entitled to credit in the sum of \$247.10 paid libelant by respondents on July 31, 1944.

XIV.

That it is true that on or about July 31st, 1944, at San Francisco, California, respondents gave the libelant \$247.10 for a complete release of all claims and demands

against respondents, but that said release is void, unconscionable and the consideration therefore insufficient, and that said settlement indicated by said release was not freely and voluntarily entered into by libelant, with full knowledge and appreciation of all of his rights.

CONCLUSIONS OF LAW

The Court makes the following conclusions of law on the findings of fact:

That libelant is entitled to recover from the respondent

343.87

United States of America the sum of \$16,~~86.27~~ and his costs of court incurred herein.

That upon motion of libelant a final decree shall be entered in accordance herewith providing therein that the decree shall be satisfied or an appeal be taken within ten (10) days after service of notice of entry of said decree on the respondent United States of America, or their proctors.

Dated: March 7th, 1946.

CHARLES C. CAVANAH

United States District Judge

Approved as to form: Charles H. Carr, United States Attorney, by Robert E. Wright, Asst. U. S. Attorney; McCutchen, Thomas, Mathew, Griffiths & Greene, by George E. Toner, Proctors for Respondents.

[Endorsed]: Filed Mar. 8, 1946. [41]

In the United States District Court
Southern District of California
Central Division

In Admiralty No. 3915-H

ROBERT C. JOHNSON,

Libelant,

vs.

PACIFIC TANKERS, INC., a corporation, UNITED
STATES OF AMERICA, and THE UNITED
STATES WAR SHIPPING ADMINISTRA-
TION,

Respondents,

FINAL DECREE

This cause having come on regularly to be heard on the pleadings and proofs, and having been argued and submitted by the advocates for the respective parties, and due deliberation having been had, it is now, on motion of David A. Fall, Proctor for libelant.

Ordered, Adjudged and Decreed, that the libelant have and recover from the respondent United States of
[C.C.C., J.] 343.87

America, the sum of \$16,486.27, and costs of libelant taxed in the sum of \$205.61, all to the sum of \$16,549.48, with interest thereon at the rate of four (4%) per cent per annum until paid, and it is further,

Ordered, Adjudged and Decreed that respondents Pacific Tankers, Inc., a corporation, and The United States War Shipping Administration, be dismissed: and it is further [C.C.C., J.]

Ordered, Adjudged and Decreed that unless this decree be [42] satisfied or an Appeal taken therefrom within ten days after service of Notice of Entry of this Decree on the respondent United States of America; or its Proctors. [C.C.C., J.]

Dated: March 8th, 1946.

CHARLES C. CAVANAH

United States District Judge

Approved as to form: Charles H. Carr, United States Attorney, by Robert E. Wright, Asst. U. S. Attorney; McCutcheon, Thomas, Mathew, Griffiths & Greene, By George E. Toner, Proctors for Respondents.

Judgment entered Mar. 8, 1946. Docketed Mar. 8, 1946. C. O. Book 37, page 252. Edmund L. Smith, Clerk, by L. B. Figg, Deputy.

[Endorsed]: Filed Mar. 8, 1946. [43]

In the United States District Court
Southern District of California
Central Division

In Admiralty No. 3915-H

ROBERT C. JOHNSON,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent.

STIPULATION

It is stipulated by and between the parties that this action having been tried before Honorable Harry A. Hollzer, who died prior to rendering a decision, and the case being submitted by stipulation to the Honorable Charles C. Cavanagh for decision, and the Honorable Charles C. Cavanagh having left the Southern District of California, the petitions for orders allowing appeal and cross appeal may be presented to the Senior Judge for the Southern District of California, Honorable Paul J. McCormick, who may issue orders allowing appeal and cross appeal and citations to the Circuit Court of Appeals for the Ninth District with like effect as if said petition had been presented to, and said orders and citations had been issued by [44] the judge of the trial court.

Dated this 7 day of June, 1946.

DAVID A. FALL

Proctor for Libelant

CHARLES H. CARR

United States Attorney

RONALD WALKER

Assistant United States Attorney

ROBERT E. WRIGHT

Assistant United States Attorney

HAROLD A. BLACK

GEORGE E. TONER

MCCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS & GREENE

Proctors for Respondent and Appellant

It Is So Ordered:

Dated: June 14-46.

PAUL J. McCORMICK

United States District Judge

[Endorsed]: Filed Jun. 14, 1946. [45]

[Title of District Court and Cause.]

PETITION FOR APPEAL

To the Honorable Paul J. McCormick, Judge of the United States District Court, Southern District of California, Central Division:

The United States of America, your petitioner, respondent herein, prays that it may be permitted to take an appeal from the final decree entered in the above cause on the 8th day of March, 1946, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignments of Error which is filed herewith.

Dated at Los Angeles, California, this 7 day of June, 1946.

CHARLES H. CARR

United States Attorney

RONALD WALKER

Assistant United States Attorney

ROBERT E. WRIGHT

Assistant United States Attorney

HAROLD A. BLACK

GEORGE E. TONER

McCUTCHEN, THOMAS, MATTHEW,

GRIFFITHS & GREENE

Proctors for Respondent United
State of America [46]

Service of the within Petition for Appeal and receipt of a copy is hereby admitted this 7 day of June, 1946.
David A. Fall, Attorney for Libelant.

[Endorsed]: Filed Jun. 7, 1946. [47]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

The petition of the United States of America for an appeal from the final decree entered in the above entitled cause on the 8th day of March, 1945, is hereby granted and the appeal is allowed.

It Is Further Ordered, that a certified copy of the record herein be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Los Angeles, California, this 7th day of June, 1946.

PAUL J. McCORMICK

United States District Judge

Service of the within Order and receipt of a copy is hereby admitted this 7 day of June, 1946. David A. Fall, Attorney for Libelant,

[Endorsed]: Filed Jun. 7, 1946. [48]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Please Take Notice that the United States of America, respondent in the above entitled cause, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree entered herein on the 8th day of March, 1946, and from each and every part of said decree.

Dated this 7 day of June, 1946.

CHARLES H. CARR

United States Attorney

RONALD WALKER

Assistant United States Attorney

ROBERT E. WRIGHT

Assistant United States Attorney

HAROLD A. BLACK

GEORGE E. TONER

MCCUTCHEN, THOMAS, MATTHEW,

GRIFFITHS & GREENE

Proctors for Respondent United
States of America

To: Edmund L. Smith

Clerk, United States District Court

David A. Fall,

388 W. 7th Street, San Pedro, Calif.

Proctor for Libelant [49]

Service of the within Notice of Appeal and receipt of a copy is hereby admitted this 7 day of June, 1946. David A. Fall, Attorney for Libelant.

[Endorsed]: Filed Jun. 7, 1946. [50]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

The United States of America, respondent above named, hereby assigns the following errors in the record and proceedings in this cause:

I.

The Court erred in finding that libelant was injured through the negligence and carelessness of a fellow seaman.

II.

The Court erred in finding that as a result of the dropping of a block libelant sustained a severe concussion of the brain and injuries to his neck, shoulders and spine, and sustained as a result thereof a severe nervous shock.

III.

The Court erred in finding that libelant has been [51] damaged in the sum of \$8,557.60 by reason of his being unable to resume his employment.

IV.

The Court erred in finding that libelant has sustained general damages in the sum of \$7,500.00 for pain and suffering.

V.

The Court erred in finding that there is a balance due libelant of \$27.00 for maintenance for the period from July 5, 1944 to and including July 23, 1944.

VI.

The Court erred in finding that libelant is entitled to maintenance at the rate of \$3.50 per day during the periods July 5, 1944 to July 23, 1944, and July 30, 1944 to August 1, 1944.

VII.

The Court erred in finding that libelant is entitled to recover the sum of \$22.52, the cost of repatriation to the Port of Los Angeles from San Francisco, California.

VIII.

The Court erred in finding that the complete release executed by libelant was void, unconscionable and the consideration therefor insufficient.

IX.

The Court erred in finding that the settlement indicated by said release was not freely and voluntarily entered into by libelant with full knowledge and appreciation of all of his rights.

X.

The Court erred in finding that the libelant is entitled [52] to recover from the respondent United States of America the sum of \$16,343.87 and his costs of court.

XI.

The Court erred in not directing that the libel should be dismissed with costs to the respondent.

Dated June 7, 1946.

CHARLES H. CARR

United States Attorney

RONALD WALKER

Assistant United States Attorney

ROBERT E. WRIGHT

Assistant United States Attorney

HAROLD A. BLACK

GEORGE E. TONER

McCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS & GREENE

Proctors for Respondent United
States of America

Service of the within Assignments of Error and receipt
of a copy is hereby admitted this 7 day of June, 1946.
David A. Fall, Attorney for

[Endorsed]: Filed Jun. 7, 1946. [53]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 64 inclusive contain the Original Citation on Appeal and the Original Citation on Cross-Appeal and full, true and correct copies of First Amended Libel in Personam for Wages, Maintenance, Cure and Damages; Minute Order Entered November 13, 1945; Answer of Pacific Tankers, Inc., a Corporation, and The United States of America to the Libel; Stipulation and Order on Pretrial Conference; Findings of Fact and Conclusions of Law; Final Decree; Stipulation and Order; Petition for Appeal; Order Allowing Appeal; Notice of Appeal; Assignments of Error; Petition for Cross-Appeal; Order Allowing Cross-Appeal Without Furnishing Bond or Costs; Assignment of Errors; and Stipulation re Record on Appeal and Praeceptum for Apostles on Appeal which, together with the Original Libelant's Exhibits Nos. 1 to 25 inclusive, Original Respondent's Exhibits A to G inclusive; and copy of two volumes of Reporter's Transcripts, transmitted herewith, constitute the Apostles on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 8 day of July, A. D. 1946.

(Seal)

EDMUND L. SMITH, Clerk

By Theodore Hocke

Chief Deputy Clerk

[Title of District Court and Cause.]

Honorable Harry A. Hollzer, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Los Angeles, California

November 13, 14, 15, 1945

Appearances:

On Behalf of Libelant: David A. Fall, Esq., 388 West Seventh Street, San Pedro, California.

On Behalf of Respondents: McCutchen, Thomas, Matthew, Griffiths & Green; by George K. Toner, Esq., 704 Roosevelt Building, Los Angeles, California.

Los Angeles, California; November 13, 1945; 10 o'clock A. M.

The Court: With reference to this case of Johnson v. the United States, unless there is something else to be taken up first, shall we make as a part of the record of this trial the stipulation and order on pre-trial conference?

Mr. Toner: Yes, if the court please.

Mr. Fall: Yes, your Honor. That is agreeable. I have one other matter at this time. I ask leave to file a first amended libel. The only changes in this will show the amount of maintenance claimed up to the date of this trial, and there is one other allegation which is not denied and I believe it is a proper allegation and should be included in the original libel. It is the fourth allegation of the amended libel which reads as follows:

"That at all times herein mentioned libelant was an employee of the United States of America by the direc-

tion of the War Shipping Administration as an able-bodied seaman on board the S. S. Mission Soledad."

I think that is a necessary matter of proof and I believe it is not denied.

Mr. Toner: That is right.

Mr. Fall: And that the answers on file may be deemed answers to the first amended complaint. [3*]

The Court: That is the only change, then, in the original libel and this new instrument?

Mr. Fall: Yes. That, and the allegation showing the amount of maintenance that is claimed up to date hereof. In the original libel it was asked leave to amend to increase at the time of trial the amount of maintenance alleged to be due at that time.

Mr. Toner: If the court please, we got this amended libel this morning and I am not sure our answer meets the issue on the maintenance, on the new cause of action for maintenance. That is what I am looking at now.

Mr. Fall: I will stipulate that counsel may leave such time to go over it as he reasonably needs. It does not have to be made a part of the record this morning.

The Court: Will you return these documents to counsel?

Now, will you call our attention to the page and line where the new language is to be found relative to maintenance?

Mr. Fall: Yes, your Honor. On page 4—

Mr. Toner: Is this of the amended libel?

Mr. Fall: Yes, starting in with paragraph 14 the amounts alleged therein are different. They have increased from that appearing in paragraph 13 of the original

*Page number appearing at top of page of original Reporter's Transcript.

libel. Also on ~~page~~ 4 the numbers of the paragraphs have been changed because of the insertion of the allegation relative to the employment which is now the fourth paragraph of the [14] amended libel.

The Court: In other words, the original libel in paragraph 13 set forth the claim for maintenance?

Mr. Fall: Yes, your Honor.

Mr. Toner: I believe we answer that squarely in paragraph 13 of the Answer.

The Court: In any event that claim is deemed to be in issue?

Mr. Toner: Yes, your Honor.

Mr. Fall: Yes, and it is stipulated denied by the respondents.

The Court: Very well. Let this first amended libel be filed. May we now proceed?

Mr. Fall: The Libelant will call Mr. Johnson.

ROBERT C. JOHNSON,

called as a witness by and in his own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Fall:

Q. Mr. Johnson, will you speak loud enough so that counsel seated back here and also myself can hear you, as well as the court and the reporter.

Mr. Johnson, you are the libelant in this matter?

A. Yes.

Q. What is your age? [5] A. 27.

Q. Did you sign on the Mission Soledad on or about March 24, 1944? A. I did.

(Testimony of Robert C. Johnson)

Q. Whereabouts was the boat at that time?

A. At Long Beach.

Q. And what was your rating? A. A/B.

Q. What was your base pay?

A. \$107.50 per month.

Q. \$107.50 per month? A. Yes.

Q. How much an hour overtime were you paid?

A. 85 cents.

The Court: 85 cents per hour overtime?

The Witness: Yes, sir.

Q. By Mr. Fall: Had you worked any overtime between the date you signed on the boat and June 30 of 1944? A. Yes.

Q. And on June 30 of 1944, where was the Mission Soledad? A. In Pearl Harbor.

Q. Did you have an accident on that date?

A. Yes.

Q. Now, just before this accident, what were you doing? [6]

A. We were making the ship ready to go to sea. We were lowering the boom on the port side forward.

The Court: What date was this?

Mr. Fall: June 30 of 1944.

Q. What were you yourself doing just before the accident occurred?

A. I was coiling lines just before the accident happened.

The Court: Will you read that answer?

(Answer read.)

(Testimony of Robert C. Johnson)

Q. By Mr. Fall: Now, this line you were coiling, one end was in the cradle and where did the other end go?

A. To the forward block. There are two blocks to the guy line from the tip of the boom supporting this boom which is swung out over the side of the ship. There is a guy line that steadies that boom, keeps it in place, and the other end is fastened to the deck. I was working on this line, to move it through the forward block.

Q. Now, let's see if we get the picture. When the boom was over the side of the ship it had two guy lines on it that held it in position? A. Yes.

Q. And the boom was moved forward and placed in its cradle? A. That is right. [7]

Q. Now, had that been done before the accident happened? A. Yes.

Q. The guy line you were working on, was it the after guy line?

A. Yes, the after guy line.

Q. And this guy line is made up, then, of two blocks and two, I think we call them "double sheave lines"?

A. Yes.

Q. And then on the forward block, or it would be the upper deck, there is attached a wire rope, or a wire pennant? A. Yes.

Q. And that goes from the upper block to the tip of the boom? A. Yes.

Q. Now, how long is that wire pennant?

A. 30 feet, just about.

Q. And then from the lower end of the wire pennant there is attached one block? A. Yes.

Q. And one block is fastened to the pad eye on the deck? A. Yes.

(Testimony of Robert C. Johnson)

The Court: Just a moment. [8]

Mr. Fall: I might be able to clarify that, your Honor. I have some pictures here that show the identical situation. I think it might be better to identify these pictures at this time. It may be of some assistance. I have explained these pictures to counsel for the respondents, so we will put them in order.

Q. Now, these pictures were taken on what boat?

A. On the Mission San Gabriel.

Q. Now, is the structure of the Maccano deck on the San Gabriel identical with that of the Mission Soledad?

A. Yes.

Q. Now, can you tell us where that picture was taken and what it shows generally?

A. It was taken from above the maccano deck looking forward on the port side.

Q. Now, does this picture show the niggerhead of the winch on the port side? A. Yes.

Q. Does this correctly represent the structure of the Mission Soledad in the area this portrays?

A. Yes.

Mr. Fall: We will offer this picture as libelant's first exhibit in order.

Mr. Toner: Is that at the time of the accident that the Mission Soledad looked as it does in that picture? [9]

The Witness: With the exception of these longitudinal beams which can be moved.

Q. By Mr. Fall: To your recollection those on top of the Maccano deck are moveable beams, and in this particular picture they appear to be grouped?

Mr. Toner: Well, I don't want to be unduly technical, but I do think we should establish what the condition on

(Testimony of Robert C. Johnson)

the Mission Soledad was at the time of the accident and I don't think that some of these pictures where there is a different condition depicted have any material bearing on the case.

Mr. Fall: Oh, I don't believe the difference in the position of these longitudinal beams would have any material change in the case because I think your deposition will show the man that dropped the block was walking forward on one of these longitudinal beams.

The Court: Do you have some witness here with whom you can discuss this?

Mr. Toner: No, I don't believe so, if the court please, but I was just merely stating—I don't know what counsel has in mind—but if there is any point that is going to be made on the strength of these pictures, I think we are entitled to have the condition depicted as it existed on the Mission Soledad at the time of the accident. I think that that is all that is material.

Mr. Fall: Oh, I will stipulate that there is nothing [10] in these pictures that are to be used for any purpose other than to explain the operation of the particular work that they were doing and where this libelant was standing at the time he was injured, and it is not to show any matter that might be different in these pictures that would have any bearing on the case at all. It is merely for descriptive purposes.

Mr. Toner: I have no objection to the pictures being offered for the purpose of showing the structure and the particular layout of the Mission Soledad.

(Testimony of Robert C. Johnson)

The Court: For that limited purpose, then, we will receive the photograph. Give it to the Clerk. It will become Libelant's Exhibit 1.

Mr. Fall: It was merely for the purpose of acquainting the court with the general picture.

Mr. Toner: That is perfectly all right.

(The photograph referred to was received in evidence and marked as Libelant's Exhibit No. 1.)

Q. By Mr. Fall: Now, this next picture, where was that taken from?

A. That was taken on the port side looking aft.

Q. Is that under about the first athwartship beam of the Maccano deck?

A. This is under about the first athwartship beam of the Maccano deck.

Q. On the Mission Soledad at the time this accident [11] happened, there were no ropes on the deck as you see in this picture? A. No.

Q. But the structure of the Maccano deck was similar to this? A. Yes.

Mr. Fall: We offer this picture as Libelant's next in order.

The Court: I might make this suggestion. I think some time before the close of the trial we might ask the reporter to type the portion of her notes describing what each photograph indicates, and they can be attached to the photographs so it will be readily ascertainable.

Mr. Fall: Dr. Dickerson is here now. May I put him on out of order?

The Court: Yes. This witness will stand aside.

DORRELL G. DICKERSON,

called as a witness by and on behalf of the libelant, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Dorrell G. Dickerson.

Mr. Fall: At this time, your Honor, for identification the libelant will offer the supplemental report of Dr. Dickerson, the examination that he made at the court's request, and which was made October 17, 1945. [12]

The Court: May I suggest that instead of giving it a number at this time, in order to keep the photographs together in numerical order, that we defer marking the report with the understanding that before the close of the case it will be given its appropriate exhibit number?

Mr. Fall: Yes, your Honor.

Direct Examination.

By Mr. Fall:

Q. Dr. Dickerson, what is your occupation?

A. Doctor of Medicine.

Mr. Toner: If the court please, the doctor's qualifications are very readily admitted.

Mr. Fall: That he is specializing in—let's find out what it is. I know we can join in a stipulation to your qualifications, Doctor, but perhaps you had better tell us.

The Witness: Diagnosis and treatment of the organic disorders of the nervous system; the surgical treatment of brain disorders and nervous disorders.

Q. By Mr. Fall: Now, Dr. Dickerson, did you have an opportunity or occasion to examine Robert C. Johnson?

A. I did.

(Testimony of Dorrell G. Dickerson)

Q. And I notice from a report that that was on or about January 20, 1945.

A. It was on January 20, 1945.

Q. Doctor, will you tell us what you found in your [13] examination at that time, what you did?

A. Well, I would like to state that he gave me the complaints which I have placed in quotations as "head-ache, sick stomach. My balance is poor. I am dizzy. I am nervous, tense and irritable."

They were his complaints. The rest of the history that pertains to his other life and his age and so forth, I will ignore because there is nothing in that of any previous injury or any serious diseases that he admitted to me. I asked him what happened. Do you want me to go on with that?

The Court: Suppose you tell us what he said.

The Witness: He told me that in September of 1942 he entered the Merchant Marine service in San Diego, California. The service was uneventful until June 30, 1944. A falling guy block fell from a distance of six to eight feet from above. He said the weight was about 15 pounds. This block struck the back of his head. He recalls walking away. He was not unconscious but has no recollection of the injury. He was told what happened. He received a scalp laceration. The accident occurred at Pearl Harbor. He went to the emergency hospital at Pearl Harbor and the laceration was sutured. He returned to his ship. The next day his head was X-rayed at Public Health Center and he was sent to the Queens Hospital in Honolulu and remained there for about one week. He returned as an out patient. Shortly after this [14] he returned to the United States, the latter part of

(Testimony of Dorrell G. Dickerson)

July, 1944. He arrived at San Francisco and then went to San Diego where he reported on sick call, I presume to the Public Health Center. He stated that he got worse and came to Los Angeles to the Public Health Service where he was examined and was sent to the French Hospital for one week. Then he went to the relocation center, Santa Monica, California, and remained there for six weeks. Then he returned to San Diego and remained at home until recently. Then he returned to Los Angeles a few days before January 20, 1945. He states that he has not been to any private physician. The Public Health Service has treated him on all occasions. Has been treated monthly. No lumbar puncture made.

I asked him the progress of his condition and he said that which I have quoted from his own words, "no improvement." He stated that headache is constant day and night. Experiences difficulty sleeping due to headache. Takes codeine—takes this as needed—four or five tablets each day. Went to his home town of Sabinal, Texas, a few weeks ago and saw Dr. E. M. Woods who declined to give him codeine. Upon return to Los Angeles states that he had an electro-encephalographic study made at Cedars of Lebanon Hospital. This was just before this visit to Texas.

Now, I then proceeded to make an examination. Shall I review that, your Honor? [15]

The Court: Recite the examination that you made.

The-Witness: He was a young, thin, undernourished white man of about stated age. He is accompanied by his mother to this examiner's office. He sits in the consultation room with his hands over his eyes to shade them from the light. He is very quiet and answers slowly and only

(Testimony of Dorrell G. Dickerson)

when pressed for reply. He is about five feet six inches in height and weighs approximately 128 pounds. Complexion pale. Head is normal shape and size. Tendon over left occipital region. No visible scars. States the laceration occurred in the left occipital area. That is the back of the head.

Ears clean—tympanic membranes normal. They are the membranes inside the ear. The teeth are normal. Throat negative. Nares unobstructed. Thyroid not palpable. Post cervical lymph nodes not enlarged. Neck: Alleges tenderness in all turning movements when the head is turned to the right and left. The chin to test tests performed with difficulty, complaining of soreness in the neck. That is my insertion there, but that is the reason he couldn't get his chin down to his neck because he said it hurt him. Tenderness on sixth and seventh cervical spines. No crepitus or deformity. Turning head to the right and left limited to one-third normal range. It was limited when he complained of pain and soreness there and not any deformity. Heart and lungs normal. Blood pressure 120 over 80. Pulse 78, regular. The abdomen [16] was flat. Extremities are anatomically normal. Temperature was 99 degrees Fahrenheit, and the back is normal.

The Court: May I interrupt just a moment? What was this condition that you described as turning the head from right to left limited to one-third the normal range? Do you mean he could move only one-third of the normal range?

The Witness: Yes. In other words, you can turn your head 90 degrees normally and he complained when he got around about one-third. He complained of soreness in the neck, but there is no actual limitation from a physical

(Testimony of Dorrell G. Dickerson)

standpoint. The pain there restricted the further turning. Is that clear?

The Court: Did you observe any spasm?

The Witness: No spasm and no crepitus.

The Court: Very well.

The Witness: The neurological examination: Olfactory sense normal, each nostril. Pupils equal, regular and light reactions normal. Fundi: Fullness of veins in left vision. No nystagmus. No ocular weakness. Face: Upper right brow: unable to elevate and wrinkle brow. That is something that he had existing before the accident from some other condition, probably congenital. The nasolabial folds are of equal depth. That is the crease at the side of the mouth. Trifacial areas normal. His bite was equal. Tongue in midline. Auditory tests: Weber nor referred. That is putting a tuning [17] fork at the top of his head and asking him to which ear he feels that. Some say left or right and some say equally. He was equally distributed. AC greater than BC. The shoulder girdles are equally strong and tone within normal. That is, certain nerves will affect the muscles of the shoulder. Reflexes deep: brisk, equal in arms and legs—one-one and one-half plus. That is, there was some variation in the deep reflexes but nothing of any excessive nature.

The Court: Does that apply to the legs as well?

The Witness: Yes. Patellars and tendon Achilles equal, brisk. Sometimes the reflexes of individuals will vary under emotional conditions or the doctor's examination and sometimes they will vary in different states of health. When you are feeling well and happy mentally your reflexes will be all right. When you are depressed, they may be lower. But, when one is absent or when they

(Testimony of Dorrell G. Dickerson)

are unequal, then that is significant. That was not so in this case.

Abdominals present but sluggish. Creamasters sluggish. Plantars sensitive. No clonus. No Babinski, Chaddock, Gordon, Oppenheim, etc. Sensory examination; Normal for all modalities—pain, touch, tactile, thermal, posture, vibratory. Motor: No weakness or atrophy. Romberg: Slight swaying observed. When I had him put his feet together and close his eyes, he swayed slightly. That is a very important thing. The gait was natural. His co-ordina[18]tion was good. The cerebellar tests normal. Tremors of closed eyelids and rapid tremors of extended fingers. Perspires freely from arm-pits.

I examined the cerebral lobes. The frontal lobe was clear. He gives history but cannot recall the circumstances of his injury. He only recalls what was told him. That is what he informed us. In the temporal lobe he had no aphasia. He could speak and find his words with ease. In the parietal lobe there was no impairment of the sensibility. That is tested by putting something in the hand and having him close the eyes. Normally we can determine what it is, but in certain conditions of the brain that is impaired or lost. His was normal.

The occipital lobes were even. By holding a finger to the eyes and having him gaze straight ahead, wiggling the finger, he could see the finger at 90 degrees away from the eyes with the gaze straight ahead. That is normal.

I ordered an X-ray of the skull. There were no signs of fracture or signs of bone injury. The blood picture was obtained and that was normal. I obtained a lumbar puncture on Mr. Johnson at the California Hospital. The pressure was 90 mm measured on the water scale. That

(Testimony of Dorrell G. Dickerson)

is a low pressure. The fluid was clear and colorless. The Wasserman negative.

I had an electro-encephalographic examination made at the Children's Hospital. I haven't that here. It was forwarded to one of these gentlemen here. I don't know which one has it. That was reported to me as negative.

Mr. Toner: Pardon me. If the court please, I believe that electro-encephalographic report is with the court's copy of the doctor's report. If there is any point that the doctor wants to make on that, he will find it, I believe.

The Witness: Yes. This is the one. I had reviewed that.

The Court: In other words, the original of the electro-encephalographic report is attached to the original of your report made under date of January 20, 1945?

The Witness: That is correct.

The Court: You have examined that?

The Witness: I have sir.

The Court: Now, then, as a result of your examination and findings, have you reached certain conclusions respecting this man?

The Witness: I have, your Honor.

The Court: You did reach certain conclusions as of the date of this report, January 20, 1945?

The Witness: There is the report, yes. I have a conclusion based upon that examination, my original examination.

The Court: You have seen him since?

The Witness: Yes, I have. On October 17, 1943, I examined him again.

The Court: 1945.

(Testimony of Dorrell G. Dickerson)

The Witness: 1945. I am wrong there.

The Court: Well, may I inquire of counsel, is there a report of the later examination?

Mr. Fall: Yes, your Honor, that was the one I referred to and asked to have marked for identification, and your Honor thought it should be marked later and given an appropriate number later on.

The Court: Yes. Do you have a copy of that, too, Doctor?

The Witness: Yes, I have, sir.

The Court: Is there any objection to the doctor stating what the later examination showed?

Mr. Fall: I have no objection. It is perfectly proper at this time.

Mr. Toner: No objection.

The Court: Proceed, then.

The Witness: On October 17, 1945, I saw Mr. Johnson at my office and obtained a supplemental history. He told me that since he was here last he has not worked or performed chores, etc. Has not been under medical supervision or received treatment from other sources. States that he has been living in San Diego.

I asked him, "What are your complaints now?" He said, [21] "Headaches, extreme weakness, nervousness, inability to sleep and continued loss of weight."

I asked him, and I will read from my report:

"This man's general physical appearance remains the same except there may be some loss in body weight. His complexion remains pale and he is thin and undernourished. Head is normal shape and size and the tenderness alleged on last examination (left occipital area) is still

(Testimony of Dorrell G. Dickerson)

complained of. There are no visible abnormalities here. Ears, nares, mouth, throat and teeth negative. Post cervical lymph nodes not palpable. Thyroid negative. Neck is still complained of on all turning movements; chin to chest test somewhat difficult. Turning head to the right and left is limited. The sixth and seventh cervical spines are said to be tender. There is no muscle spasm, deformity or crepitus noted. Heart negative. Lungs normal on ordinary examination. Blood pressure 122/82. Pulse 78-80, regular. No abdominal complaints. All four extremities are normal. Back is negative.

"Neurological: sense of smell normal. Pupils regular, equal and react to light. Fundi: Left fundus shows the veins to be full. Right is normal. Cups shallow. Discs are elevated. No weakness of ocular muscles. Nystagmus not present. No diplopia. Apparently unable to wrinkle and elevate the right brow. Trifacial fields negative. Position of tongue and bite normal. Auditory tests within normal. [22] Shoulders equally strong. Deep reflexes in arms and legs equal and within normal. Superficial reflexes: Abdominals sluggish. Cremasters a bit sluggish. Plantar reflexes remain sensitive. No pathological reflexes. No clonus. Sensory tests within normal. Motor tests normal. There is some swaying in the Romberg. Gait and coordination normal. Tremors of closed eyelids and extended fingers. Cerebellar normal. Cerebral lobes: Frontal—normal. States that he cannot recall injury of 6/30/44. Speech normal. Stereognostic sensibility normal. Visual fields normal on confrontation tests.

The Court: Was that the last examination you made of this man?

The Witness: It was, sir.

(Testimony of Dorrell G. Dickerson)

Q. By Mr. Fall: All right, Doctor, would you review then to the court your conclusions that you made on your first examination, and then your conclusions as a result of the subsequent examination, and if there are any changes in your views between the two, will you explain those to the court.

A. Well, sir, my conclusions on the first examination of January 20, 1945, are as follows: "This young man is suffering from residual effects of concussion of the brain (post concussion syndrome)."

That is the effects of a blow or concussion that hang [23] over. We call that a post concussion syndrome.

"There were two examinations of the central nervous system and no positive neurological findings were deducted.

"The general physical examination is negative—except that he is below standard physically (undernourished).

"The electro-encephalographic study made at Children's Hospital is negative. X-rays of the skull are uninteresting. Lumbar puncture is also negative.

"Prognosis: Good for eventual recovery. Full recovery should occur without permanent disability—but—this may require eight to twelve months."

Then, I advised some treatment.

Q. Will you go ahead and state what you advised in the treatment.

A. Yes. I suggested an increase in his fluid intake to about two liters daily. This was because of his low spinal fluid pressure of 90. The normal is some 120. His was 90. I advised a full diet, rich in red meats and protein. This was to build up his general metabolism. He

(Testimony of Dorrell G. Dickerson)

should avoid direct rays of the sun. Should avoid excessive heat. Moderate exercises, such as walking, Maximum rest periods. Analgesics for headache if needed. Codeine should not be used, only for extreme pain, and recheck examination should be made at a later date.

Q. Now, after your examination on October 17, will [24] you tell us what your conclusions were and your findings at that time as a result of that examination.

A. On October 17, 1945, my conclusions were as follows:

"This man's general condition remains about the same, except for the development of additional symptoms of neurosis. He is quite introspective and sits holding his head and shielding his eyes. There are no signs to indicate focal brain lesion (discs are elevated). If headaches continue, re-examination of the cerebrospinal fluid is indicated."

The treatment advice was the same. There is no necessity to repeat that.

Q. Now, with reference to your finding that the discs are elevated, to you what would that indicate?

A. Well, it is a condition often seen, I will say, in certain post-injury cases. The optic nerve is pushed out slightly. In his case there is a very slight elevation. There is no indication of increased brain pressure on the spinal fluid, however. That is the most important part of the examination to determine pressure. I don't know whether that disc elevation may have existed. It may be physiological with him. It may be one of the things that occurred following this blow. It would be hard to know, not having examined his eyes prior to the injury. I would say it is not, in my opinion, due to any extreme pressure be-

(Testimony of Dorrèll G. Dickerson)

cause the spinal fluid pressure is only 90, and that is the critical test of brain [25]

Q. Now, as to the left fundus, you say it shows the veins to be full. Now, with the rest of the picture as you found it, what would that indicate?

A. Well, there are some cases where the veins become distended which increases or decreases the capacity of the skull cranial cavity and the vein dilates because the fluid can't escape in the optic nerve in the retina. In that instance you will have other things that go with this fullness, for instance, what we call a choked disc. Then again, the spinal fluid perhaps will be increased.

I think this is either a hangover from his original pressure if he had one, or a physiological fullness which we sometimes observe.

Q. Did the fact that the superficial reflexes were sluggish indicate anything to you with reference to this being a situation which was the result of the injury?

A. Well, I don't believe that the superficial reflexes in this case indicate in themselves any particular injury. If they were present on both sides, even though they are sluggish, that would be considered as within normal. If they are absent on one side, that is a different thing. That is something important. It might indicate an injury or disease. His were equally present but sluggish. In a person who has had an injury and who develops certain nervous symptoms, we often find deep reflex brisk and superficial [26] reflex sluggish.

Q. Now, with reference to the swaying in the Romberg test, what would that indicate to you?

A. That again is a symptom, the finding of which is not in itself to be given too much consideration because

(Testimony of Dorrell G. Dickerson)

many nervous, neurotic or unhealthy people will sway slightly due to a general underactivity of the coordinating nerves of the body. Again, a positive Romberg, if it is a bad one, that is, marked swaying, is an indication of serious injury or disease. However, his, I would say, would be on the borderline in the post-concussion neurotic group.

Q. I see. Now, with reference to these tremors of the closed eyelids and extended fingers, is that a symptom that you would find in a post-concussion case?

A. You will find it there, and you will find it in other conditions. Oftentimes as a common observation the trembling of lids and fingers occur in people who have had concussion of the brain or injury. It is not an organic sign. It is not a sign of any focal part of the brain being concussed. It is a nervous condition that builds up.

Q. You did find him in a nervous condition?

A. That is correct.

Q. Now, doctor, this may not add much to the picture, but I believe the evidence will show that the block with which he was struck weighed approximately 40 pounds rather [27] than 15 pounds, and having that in mind and having in mind that on October 4, 1944, the doctor examined Mr. Johnson at the United States Public Health Service in San Diego, found a slight ankle clonus on both sides; suggestive Babinski on left side, the positive Romberg, and that was about three months and a half before your first examination, and that was a little over three months after the injury—now, as I understand that particular condition of suggestive Babinski—pardon me, did you give him a Babinski?

A. On both occasions, yes.

(Testimony of Dorrell G. Dickerson)

Q. Now, you found no suggestive Babinski at the time of your examination?

A. No. I tested for the Babinski and for the existing reflexes that go with it. They are all negative.

Q. Now, if on October 5th or October 4th of 1944 he had these symptoms that Dr. Grimm found, what would that indicate as of that date?

A. Well, I would say that would indicate he had some injury there. Now, they were not present when I examined him. They could have been when Dr. Grimm examined him and cleared up in the interval up to the time I saw him.

Q. On those particular findings you don't expect them to remain constant, do you?

A. If there is a destructive lesion of the brain or the spinal cord, for instance, a bullet or stab wound or a [28] tearing of the brain from the base of the bone into that area, that will produce these, that is, any permanent thing. Whereas if you have a transient condition of an accumulation of fluid or, say, a slight bleeding or bruise—when that is absent, then these signs will disappear. They are not constant under those conditions. Only an anatomical interruption will produce a permanent one.

Q. And the condition that you found in Mr. Johnson was that of a concussion where there was no brain lesion so that if they were found in October of 1944, you would not expect that condition in him to be constant?

A. I would not think so, no.

Q. Now, with reference to the electro-encephalographic study made in January of 1945, that was made some six and one-half months after the accident. Having in mind the nature of the injury, having in mind the

(Testimony of Dorrell G. Dickerson)

findings in October of 1944 of the doctor in San Diego, you would be unable to tell whether or not the electroencephalographic study would have been different some three or four months before, I mean before the date yours was taken?

A. The test that was made for me at the Children's Hospital was what is known as negative. That could have been positive before and altered from time to time or improved. I have no knowledge of that but it is possible for that to occur under conditions of this kind. [29]

Q. I see. Well, I mean, if it had been positive at a prior date, because of the nature of his injury you would expect to find at some later date a normal electroencephalograph?

A. Yes, that is my opinion.

Q. Now, on both times that you examined this man, was he disabled from returning to employment?

A. Yes, he was.

Q. Now, did you get the history, Doctor, that on various occasions Mr. Johnson has had spells of lapses of memory when he would not recall anything that he did or would not recognize people; that is, they would not be prolonged, but occasions of approximately a half hour?

A. Well, now, if he told me that I have neglected to incorporate it in my report. I don't recall that. He may have. What he did tell me was that he has no recollection of the details of the accident, only what he was told, and if he told me that, I neglected to put it in the report, to the best of my memory.

Q. I would not be a bit surprised but what he did not tell you because I did not find it out until yesterday.

A. Well, then, he did not tell me.

(Testimony of Dorrell G. Dickerson)

Mr. Toner: Just a moment. If the court please, I hardly think that Mr. Fall should be testifying. I am going to object to that. [30]

The Court: Well, there is no jury here, and your observation is correct.

Q. By Mr. Fall: Well, I will ask you this, Doctor. I believe the evidence will show that after October 1, 1945 he had had spells of lack of memory or failure to recognize people; that they have come, the most frequent was three in one day, and then they have been at less frequent intervals from a period of one month to five or six weeks. The periods have been less frequent during the past few months.

Now, with that additional symptom, would that give you any light or enable you to explain that particular symptom and its relation, if any, to the accident?

Mr. Toner: If the court please, may I object to the question as being an improper hypothetical question?

The Court: Well, I understood counsel to state that he expects the evidence to show the matters recited in the pending question. Under those circumstances, in order to avoid recalling the doctor I am inclined to allow the question. However, I would like to have the reporter read the first part of the question and see if counsel misspoke himself as to a certain date.

(Question read.)

Mr. Fall: It would be 1944 instead of 1945, your Honor.

The Court: Is the question clear to you, Doctor?

The Witness: It is, your Honor. [31]

The Court: You may answer.

(Testimony of Dorrell G. Dickerson)

The Witness: We often see cases of post-injury where the person complains of periods of absence of memory or impaired memory periodically. Frequently they will complain of an inability to recall one's name or dates. I don't believe those are structural or organic symptoms of concussion, but are a composition of a post-concussion neurosis where the individual is so preoccupied with his own troubles, his headache, his dizziness, his fear of security, and those things, that his mind is vulnerable and he does not pay attention to things that he ordinarily would pay attention to and therefore he has these lapses. If they are true organic lapses, the electro-encephalograph will show some abnormality in the wave. There should be an organic sign somewhere in the examination. I am inclined to believe these are psychological rather than organic and are a pattern of a post-traumatic condition as a neurosis where, as I say, the person is so preoccupied with himself, his own worries and troubles, that he goes through life and when you introduce him to someone he doesn't recall that person's name, like a busy man will pay attention to those things, and when he wants to remember it, he can't recall. Those lapses are often complained of by these people and then when they have assurance or have recovered from their troubles they no longer have these symptoms. That is in this particular case something [32] that time should alleviate.

Q. By Mr. Fall: Doctor, since you have had your subsequent examination here in October of Mr. Johnson, will you state what you believe your prognosis is at the present time?

A. And I think Mr. Johnson will eventually recover. I believe his rehabilitation is going to be slow. I have

(Testimony of Dorrell G. Dickerson)

altered, my prognosis in this respect, that his recovery will not take place as rapidly as I thought it would. I believe that original estimate I gave of eight to twelve months should be changed somewhat. It will probably take another year or sixteen months.

Q. It is something indefinite?

A. That is something that is always indefinite to the doctor. It just depends on the individual factors involved, how he is handled, if he gets a good job, and if he can be made to adjust. If he gets out and can't get a job and people kick him around and he gets feeling low-down or gets preconceived ideas, it will be prolonged; whereas, if he gets a fairly healthy outlook on life, proper employment, something to look forward to, his recovery will be much accelerated.

Cross-Examination.

By Mr. Toner:

Q. In many of these cases the pendency of litigation is a contributing factor, is it not, Doctor?

A. Yes. That is often a factor in the worry and [33] stress and increases one's apprehensions at the time of a trial, I think.

Q. And when the trial is over, very frequently recovery is very much accelerated, is it not?

A. I would say that is oftentimes the case, but there are exceptions to that. I would not want to put that down as a rule.

Q. I said on very many occasions.

A. Yes, on many occasions they do improve and get well faster.

(Testimony of Dorrell G. Dickerson)

Q. Now, Doctor, Mr. Johnson stated that he had no recollection of the injury whatsoever, did he?

A. He told me he couldn't remember what happened, that he was told these things happened, but said he walked away and wasn't carried away, that he was knocked out on his feet as I would say in common language.

Q. He was rational when you saw him on both times?

A. Yes.

Q. And he is an intelligent young man, is he not?

A. Yes, a very intelligent young man.

Q. Now, you made a quite thorough examination of him, Doctor?

A. Yes.—Well, as thorough as I could in 25 years of experience. I gave him everything the book calls for.

Q. And you covered all the symptoms that one would be [34] likely to expect in a concussion case?

A. Yes, I would say I did, sir.

Q. You covered the eye condition. The nystagmus is a very frequent symptom of post-concussion, is it not?

A. I think that occurs more in the organic things, in the organic disease or injury, but I covered all the cranial nerves, the 12 cranial nerves that come from the base of the skull. The rest of the nervous system was gone over thoroughly on two occasions.

Q. Doctor, you found a general overall normal picture, did you not?

A. Approximately. I found no organic structural changes, that is, no defects in the continuity of the nervous system that I could detect.

Q. When you listed the complaints, these were all suggestive things, were they not?

A. Yes, all suggestive, the headache and dizziness—

(Testimony of Dorrell G. Dickerson)

Q. He complained of a headache? A. Yes.

Q. There is no way to check on whether he has a headache or not, is there?

A. He told me he had been given codiene from a doctor on account of severe headaches. The low spinal pressure often accompanies a headache, that is, in post-concussion cases. We have two groups, those with high pressure and those with [35] low pressure. I would say that while the headache complaint is suggestive, the appearance of the man, his cooperation, the fact that I couldn't detect him in any false actions or anything of that kind, it would be my opinion that he has a headache.

Q. Now, when he complained of pain in the motion of his neck, there was no physiological limitation of motion, was there?

A. There was no limitation of motion. In other words, I could have pulled his head around, but against the pain. There was no limitation from any structural change that I was able to detect like a crepitus or goiter or muscle spasm, but as I started turning his head to the right, he complained of pain in the neck in the sixth and seventh cervical of the spine, but no structural damage that I could see or feel.

Q. What would be the apparent cause of the pain, Doctor?

A. Well, it could be—oftentimes people who are struck on the head, especially on the back of the head, there is a

(Testimony of Dorrell G. Dickerson)

condition of the muscles and what we call a fibrosis that occurs. It is nothing you can see or feel, but they complain of pain.

Q. Did you draw any conclusion from the fact that he again complained of pain when you saw him in October in approximately the same area? [36]

A. Yes.

Q. And I assume in approximately the same degree.

A. Well, I don't recall the degree this last time, but he complained of pain and soreness in his neck. I had him turn his head and tried to get him to put his chin down on his chest. I think in fairness to Mr. Johnson, I would like to state, if I may, your Honor?

The Court: Yes.

The Witness: That the man is very difficult to get to complain. He sits there and won't tell you very much. You have to draw him out on cross-examination and get him to tell you when he is being examined. I found that very difficult with him. He was not inclined to aggravate his complaints to me.

Q. When counsel was asking you about the lapses of memory as a post-symptom, you made the statement that you did not have any record of that.

A. I can't recall any statement to me. He may have said that, but I have no record of it and the only thing I can tell you is that I would not either affirm or deny it.

Q. With the thoroughness of your report and the fact that you have had many of these cases, wouldn't it be likely that your record would show that symptom if complaint had been made of it?

(Testimony of Dorrell G. Dickerson)

A. Yes. I usually do that. When a patient comes in, [37] I say, "What are your complaints?" And I write down everything that they tell me and I usually put it in the words as it came from the patient's mouth. I have that in my record.

Q. The point I am making, of course, Doctor, is that there is an inference in your own mind, is there not, that he did not make the complaint and you do not have a record of it?

A. I wouldn't state it that way. I have no record of it. He may have said something to me and in mind may not have gotten it, but I think I got everything he said. I can slip, you know.

Q. So can we all, Doctor. You also made the statement, Doctor, that this condition was not permanent?

A. I don't think it is permanent. I think he will get well.

Mr. Toner: That is all.

The Court: Anything further?

Mr. Fall: I have nothing further. I imagine the doctor can be excused.

(Witness excused.)

The Court: At this time we will take a recess until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock of the same date.) [38]

Los Angeles, California; November 13, 1945; 2:00 o'clock P. M.

(Other court matters.)

The Court: Now, we will resume the trial of Johnson v. United States.

Mr. Fall: Yes, your Honor. Mr. Johnson, will you please take the stand again.

ROBERT C. JOHNSON,

recalled as a witness in his own behalf, testified further as follows:

Direct Examination (Continued).

By Mr. Fall:

Q. I might cover all these pictures with the statement that you have seen all these pictures, Mr. Johnson?

A. Yes.

Q. And all these pictures were taken on the Mission San Gabriel? A. Yes.

Q. And the structure of the ship is identical with that of the Mission Soledad?

A. The permanent structure, yes.

Q. I mean these moveable beams.

A. These longitudinal beams can be moved.

Q. And they are not in the same position that they were on the Mission Soledad the day this accident happened? [39] A. That is right.

Q. Now, the third one in order, where was that picture taken from and facing where?

A. It is taken from the well deck looking forward on the port side, just aft of the third athwartship beam.

Mr. Fall: We offer this as Libelant's Exhibit 3, your Honor.

(Testimony of Robert C. Johnson)

The Court: Yes. Let it be marked as Libelant's Exhibit 3.

(The document referred to was received in evidence and marked as Libelant's Exhibit No. 3.)

Q. By Mr. Fall: The next picture I show you was taken where and showing what?

A. It was taken from the forecastle head forward on the port side looking aft.

Q. Now, this davit with its head or the tip of it pointing out, is that the davit that is in that particular area or was on the Mission Soledad?

A. Yes, the same; the same position and identical to this one.

Mr. Fall: We offer that as the next exhibit in order, your Honor.

The Court: That will become Libelant's next exhibit.

(The document referred to was received and marked as Libelant's Exhibit No. 4 for identification.) [40]

Q. By Mr. Fall: Now, this picture I am showing you shows what?

A. That shows the 10-inch block, single sheave.

Q. As I understand it, that is merely a block showing the length of the block that is similar to the one that was used on the guy rope on the boat you were injured on?

A. Yes. It is only similar. The one I was struck with is—

Q. Thicker? A. Double sheave.

Q. A single sheave is a single pulley and a double sheave is a double pulley? A. Yes.

Mr. Fall: We offer this as the next exhibit in order.

(Testimony of Robert C. Johnson)

The Court: That will become Libelant's Exhibit 5.

(The document referred to was received and marked Libelant's Exhibit No. 5 for identification.)

Mr. Fall: It is just merely explanatory, your Honor, for the purpose of giving you the idea of what those blocks are. You probably know, but this is for the record.

Q. Now, showing you the next picture, where was this taken from and what was it taken of?

A. From the forecastle head looking aft on the port side.

Mr. Toner: Didn't we have that before? [41]

Mr. Fall: No. There is one more to the side of the boat. This is one which shows directly aft.

(The document referred to was received and marked as Libelant's Exhibit No. 6 for identification.)

Q. By Mr. Fall: Now, the next picture is taken from where and shows what?

A. Well, that is taken from the top of the Maccano deck, about on the fifth athwartship beam looking forward on the port side.

Q. That shows the boom nested? A. Yes.

Q. Now, referring to the point where the boom is nested, it is right alongside of the gun tube?

A. Yes.

Q. Now, when you refer to being nested, there is a cradle for the boom to lie in, is there not?

A. Yes.

Q. And when it is nested, it is quite secure in that cradle? A. That is right.

Q. And the boom in that picture is nested?

A. Yes.

(Testimony of Robert C. Johnson)

(The document referred to was received and marked as Libelant's Exhibit No. 7 for identification.)

Q. By Mr. Fall: The next picture, is this a similar [42] picture to the one we just had, Exhibit 7?

A. Yes, a similar picture.

Mr. Fall: We offer this as next in order. The picture is taken a little bit more to the port than the one the witness just identified.

The Court: This will be marked Libelant's Exhibit 8.

(The document referred to was received in evidence and marked as Libelant's Exhibit No. 8.)

Q. By Mr. Fall: This picture I am showing you here now, was that taken from even a little more to the port than the last picture, but showing the same similar view of the boat?

A. I couldn't say it is any more to the—

Q. Suppose we have that last one just for comparison.

The Court: When you have it marked No. 8, will you let me see it?

The Clerk: Yes, your Honor. (Handing document.)

The Court: Now, will you compare the two. (Handing document.)

The Witness: Yes. It is taken even more to the port side.

Mr. Fall: We offer this picture then as Libelant's next exhibit in order.

(The document referred to was received and marked as Libelant's Exhibit No. 9 for identification.) [43]

(Testimony of Robert C. Johnson)

Mr. Fall: The next picture I am showing you, what does that show and from where was it taken?

A. It was taken out on the fifth athwartship beam on top of the Maccano deck looking forward on the port side.

Q. And facing a little more to the port than the previous picture? A. Yes.

Q. It does not show the nested boom?

A. No.

The Court: This will become Libelant's Exhibit 10.

(The document referred to was received and marked Libelant's Exhibit No. 10 for identification.)

Q. By Mr. Fall: Now, this photograph shows what?

A. That shows one of the wire pennants that we have referred to once before. It is attached to the tip of the boom as it runs aft to the block, the forward block.

Q. Is that a similar wire pennant? Is that similar to the one you had on the Mission Soledad? A. Yes.

Q. And the one that was being used the day you were injured? A. Yes.

Mr. Fall: We will offer this next exhibit, your Honor.

The Court: That will become Libelant's Exhibit 11.

[44]

(The document referred to was received and marked as Libelant's Exhibit No. 11 for identification.)

Q. By Mr. Fall: Now, the next picture I show you, what boat was that taken on?

A. This was taken on the Crater Lake.

Q. And that does not portray the exact position of the longitudinal or fore and aft beams that were on the Mission Soledad, does it?

(Testimony of Robert G. Johnson)

A. No. It does give an idea that they can be moved.

Q. This picture shows that they are in various positions on the Maccano deck and not bunched in one bunch as we have in the other pictures? A. Yes.

Mr. Fall: We offer this as next in order, your Honor.

The Court: That will be Libelant's Exhibit 12.

(The document referred to was received and marked as Libelant's Exhibit No. 12 for identification.)

Q. By Mr. Fall: The next picture I show you was taken on what boat?

A. That was taken on the Crater Lake also.

Q. And does that show the forward davit in approximately the same position as the one was on the Mission Soledad? A. Yes, approximately.

Q. And does that show a wire fastening from the tip end of the davit down to the deck to hold the davit in posi-[45] tion? A. That is right.

Mr. Fall: We offer this as exhibit next in order merely to show the manner in which those davits are secured.

The Court: It will be marked Libelant's Exhibit 13.

(The document referred to was received and marked as Libelant's Exhibit No. 13 for identification.)

The Court: Does that complete the series of photographs you intend to offer?

Mr. Fall: Yes, your Honor.

The Court: Then let us now number the other exhibits that are waiting to be given a number.

Mr. Fall: Yes. We have a number of exhibits that were marked for identification at the pre-trial and they are Libelant's Exhibits 1 for identification to 8 inclusive

(Testimony of Robert C. Johnson)

and at this time, if there is no objection, Mr. Toner, we will offer them in evidence and let them be marked in order. We have not laid all the proper foundation yet that might be necessary, but I think we will at a point where we would claim certain things, and I think it might be proper at this time.

Mr. Toner: Well, if the court please, there are a number of rather glaring examples of hearsay testimony in some of those exhibits. I have no objection to the offering of the exhibits for the fact that this man received hospital [46] treatment. I don't think that counsel has in mind that these exhibits should be offered for the truth of the matter asserted in these reports. I think that libelant would testify that he is suffering from headaches, and I think that that is the best evidence of some of the things that are listed in the hospital reports as symptoms.

The Court: Now, is the purpose of this offer to show that the libelant received hospital care at certain dates and places and made the complaints listed in the reports?

Mr. Fall: Yes, and all these exhibits being original abstracts from the clinical record, I think they are proper and they should be received in evidence to show the condition of the patient on the particular dates as revealed in the particular abstracts.

The Court: Well, now, when you say that it is hearsay the material in these documents, are you referring to anything other than the complaints which the witness made?

Mr. Toner: No. That is what I am referring to.

The Court: Well, I take it that these documents are part of official government records?

(Testimony of Robert C. Johnson)

Mr. Toner: Yes. I have no objection to the court's taking judicial notice of these so far as the official record is concerned. I believe that the court is fully justified in doing so.

The Court: Well, I take it that even when records of [47] this type are admitted, the recitals therein that the patient made certain complaints does not constitute proof of the truth of those complaints.

Mr. Toner: That is the point I am making, of course.

The Court: Yes.

Mr. Fall: I believe that is so. I mean, I have no objection.

The Court: So that they will be admitted accordingly and we will give them the appropriate number, do you have them in order or are they already attached to the file?

Mr. Toner: If the court please, I am not sure that I got the number of Dr. Dickerson's reports or whether they were as yet numbered.

Mr. Fall: It has not been numbered as yet, and it may be well to give it a number at this time. It was the second examination, page 1, your Honor.

The Court: Now, in other words, you are not referring to the first report of Dr. Dickerson?

Mr. Fall: No.

Mr. Toner: I was under the impression this morning that we had held both of them up for numbering.

The Court: Yes. We have the original of the second report.

Mr. Fall: Well, perhaps it would be better to make both reports as one exhibit, and the libelant will ask that both [48] reports be fastened together and be offered as one exhibit.

(Testimony of Robert C. Johnson)

Mr. Toner: Yes.

The Court: Then these two reports will go in as one exhibit and they will be marked as Plaintiff's exhibit next in order. That will be No. 14.

(The document referred to was received and marked as Libelant's Exhibit No. 14 for identification.)

Mr. Fall: Then, the other exhibits, the one marked Libelant's Exhibit 1 for identification is the clinical abstract from the United States Public Health Service Station in Honolulu. It does not indicate the date of the abstract, but it indicates hospital care furnished from July 1, 1944 to July 5, 1944.

The Court: May I inquire are you offering these in the order in which they have been previously numbered, or in their chronological order?

Mr. Fall: In their chronological order, your Honor.

The Court: Yes.

Mr. Fall: I will at this time offer all the eight in their chronological order next marked for identification 1 to 8 inclusive—1 to 22 inclusive, rather.

Mr. Toner: If the court please, I don't believe that is in strict chronological order because the Exhibit 6 that was marked—rather, the report that was marked for identification as Exhibit 6 is also from Honolulu and obviously made at [49] about the same time as Exhibit 1 which would be Exhibit 15.

The Court: Yes. I was rather inclined to think so. Perhaps they should be marked one immediately following the other.

(Testimony of Robert C. Johnson)

Mr. Fall: Yes, your Honor. I see that one is a little more complete than the other.

The Court: Why not fasten those together? They relate to the same period evidently.

Mr. Fall: Yes, your Honor, I think they do.

The Court: Well, we will mark these two together. They are really two abstracts relating to the same period and these will go in them as Libelant's Exhibit 15.

Now, are the others in chronological order?

Mr. Fall: Yes, they are, your Honor. I think they are Libelant's Exhibit 2 for identification is from the United States Public Health Service in Los Angeles.

The Court: Well, instead of reading them out loud, suppose you check them over yourself and then see if they are in proper order. I think you will find that they are not in chronological order.

Mr. Fall: I can see that they are not right now.

Mr. Toner: If the court please, if I might make a suggestion, perhaps we could get the story from the Libelant at the same time and they would automatically fall into chronological order.

The Court: Well, I think if you will just look at the dates there, we can place them in their proper order. It would appear that the following is the order that they should take. Do you have copies thereof?

Mr. Toner: Yes, I do.

The Court: This certificate of discharge which bears the date of 8/23/44 would appear to be chronologically next in order.

Mr. Toner: Yes.

The Court: We will make that Libelant's Exhibit

(Testimony of Robert C. Johnson)

(The document referred to was received in evidence and marked as Libelant's Exhibit No. 16.)

Mr. Fall: Those would follow Libelant's Exhibit 16.

The Court: This certificate will become Exhibit 16.

Mr. Fall: The hospital in Galveston, Texas, dated November 30th.

The Court: What about this one?

Mr. Fall: Oh, from the Shipping—

The Court: Will you look at the document marked 4 for identification? While the date at the bottom refers to this year, it relates to a period during August of last year.

Mr. Fall: Yes, your Honor.

Mr. Toner: It would seem to precede the certificate of discharge.

The Court: Well, they relate exactly to the same time.
[51]

Mr. Fall: It refers to a little later time.

The Court: It goes beyond the date of the certificate of discharge, so we will mark this "Abstracts from Clinical Record Covering the Period from 8/17 to 8/31/44 as Libelant's Exhibit 17.

(The document referred to was received and marked as Libelant's Exhibit No. 17 for identification.)

Mr. Fall: Next, your Honor, I think is the abstract from Libelant's Exhibit 8 for identification. It is the medical report from the War Shipping Administration and refers to a period of treatment 8/23 to 10/1/44.

Mr. Toner: Which number is that?

Mr. Fall: No. 8 for identification.

(Testimony of Robert C. Johnson)

The Court: This medical report from the medical service, Division of War Shipping Administration, covering the period from 8/23/44 to 10/1/44 will be marked Libelant's Exhibit 18.

(The document referred to was received and marked as Libelant's Exhibit No. 18 for identification.)

Mr. Fall: Next, your Honor, I believe is the one from the United States Marine Hospital in Galveston, Texas. It is marked Libelant's Exhibit 7 for identification.

The Court: What about this one that is marked Exhibit 3.

Mr. Toner: It is from October 4th to October 5th, is it not? [52]

The Court: The period covered is October of last year.

Mr. Toner: Well, I have it marked wrong, then, your Honor.

The Court: It is the abstract of the clinical record.

Mr. Fall: Yes. I believe that is the next in order.

The Court: It covers the period of October 4th and 5th of last year. It will be marked Libelant's Exhibit 19.

(The document referred to was received and marked as Libelant's Exhibit No. 19 for identification.)

The Court: Then, this one from the United States Marine Hospital at Galveston, Texas, covering the period from November 30, 1944, will be Libelant's Exhibit 20.

(The document referred to was received in evidence and marked as Libelant's Exhibit No. 20.)

.(Testimony of Robert C. Johnson)

Mr. Fall: Then, the last one is another one from San Diego, marked Libelant's Exhibit 5 for identification.

The Court: This abstract from the clinical record of the United States Public Hospital Service in San Diego for the period January 20, 1945, will become Libelant's Exhibit 20.

Mr. Fall: Is that 20 or 21, your Honor?

The Court: Oh, you are right. This will be Exhibit 21.

(The document referred to was received and marked as Libelant's Exhibit No. 21 for identification.)

The Court: If you are about to resume, we will take a [53] 10-minute recess.

(Short recess.)

Q. By Mr. Fall: Mr. Johnson, after the boom was nested, what was then done with the guy on the after side of the boom?

The Court: Are you referring to the guy line?

Mr. Fall: Yes, the guy line to the boom.

The Witness: After the boom was cradled, it was safe to unshackle the lower block from the pad eye on the well deck.

Q. By Mr. Fall: Now, we might be able to show what a pad eye is. I will show you Libelant's Exhibit 4, and will you point out to the judge, show him what a pad eye is.

A. There is one pad eye there and there is another.

The Court: Just a moment. Let us mark these. Those weren't the ones used. That is an example of a pad eye?

The Witness: Yes.

(Testimony of Robert C. Johnson)

Q. By Mr. Fall: When you refer to a pad eye, those are what you are indicating? A. Yes.

Q. Those were not the ones that were used, but they are pad eyes? A. Yes.

Q. Now, the pad eye that was used, was that forward or after or aft of the guy for the mast? [54]

A. It was aft of the guy for the mast. The mast guy is this guy right here.

The Court: Suppose you run a red line alongside of the guy line to which you last referred.

The Witness: Yes. (Complying.)

The Court: Can't you run a red line alongside of what you call this guy line?

The Witness: Yes, sir. That is the mast guy line.

The Court: For the record let it be shown that the witness is making his red delineations on Libellant's Exhibit 4.

Q. By Mr. Fall: Now, after the lower block had been unshackled from the deck, what was done with it?

A. It was lifted up to the top of this Maccano deck. Here is the top of the Maccano deck. It was lifted up there and brought around, and straightened out in line with the tip of the boom, so when taking in all the slack there would be no lines to foul up the guy line we were taking in. It would run free.

Q. Now, you have a block forward and another block aft. A. Yes.

Q. As they are lying on the Maccano deck?

A. Yes.

Q. The rope goes—put it this way: There are four lines of rope between those two blocks? A. Yes.

(Testimony of Robert C. Johnson)

Q. And in addition there is the one rope that you were taking in on? A. Yes.

Q. So when you would pull this rope, the lower or the after block would be drawn forward? A. Yes.

Q. Now, where was Mr. Dudder when you were pulling on this rope, taking in the slack and bringing the two blocks together? Was he on the Maccano deck or on the well-deck?

A. He was on the Maccano deck.

Q. When you refer to the well deck, that is the deck down here on the main deck of the ship?

A. Yes.

Q. The Maccano deck is this superficial deck that is built up above the deck cargo? A. Yes.

Q. Now, on Libelant's Exhibit 8, will you draw in the wire pennant; show the forward block and show the after block, and the after block in the position that it was in the last time you recall seeing Mr. Dudder just before the accident.

Mr. Toner: Now, if the court please, hadn't we better establish whether or not this photograph that the witness is using represents the correct situation or approximately the correct situation at that time? [56]

The Witness: They do approximately, with the exception of these movable fore and aft beams.

Mr. Toner: Where were they?

The Witness: The one in particular that he was working on?

Mr. Fall: You may draw it in if you wish to.

Q. By Mr. Fall: Now, you have indicated by two lines here alongside the longitudinal beams in the forepart

(Testimony of Robert C. Johnson)

of the picture, that indicates the longitudinal beam upon which Mr. Dudder was walking? A. Yes.

Mr. Toner: If I might make a suggestion, I think it would be better if the witness used some more legible material to draw with.

Mr. Fall: I will see if this blue pencil will do that any better than red.

The Court: Don't you think pen and ink would be better?

Mr. Toner: I think pen and ink would be better, because that crayon is going to scruff off.

Q. By Mr. Fall: It does seem to be better in ink. Will you draw in ink there the longitudinal beam upon which Mr. Dudder was walking, or its approximate position? A. Yes. (Complying)

Q. Will you put the cross piece indicating the approximate ends of the beams? [57]

A. Yes. (Complying)

Q. All right. Now, we'd better bring in this position that Mr. Dudder was in the last time you notice him. Where was he?

A. The last time I noticed him he was about in this position between these two athwartship beams.

Q. Would that be about midway between the third and fourth athwartship beams?

A. I would say approximately midway between the third and the fourth.

Q. Now, how far is it between those two beams?

A. It is 12 feet.

Q. Are all those athwartship beams 12 feet apart?

A. That is correct.

(Testimony of Robert C. Johnson)

Q. All right. Will you mark an X there then indicating where Mr. Dudder was the last time you saw him.

A. There. (Indicating)

Q. Now, that X indicates Mr. Dudder's position the last time you saw him. That is on the longitudinal or fore and aft beam? A. Yes.

Q. Now, will you draw in a line from the tip of the boom down to where the forward or the upper block was located? A. Yes. [58]

Q. Now, will you draw in in the end of the wire pennant the block? A. Yes.

Q. Now, between the block and the point where you have marked by an X was— A. The other block.

Q. The other block was at or about where you have the point marked? A. Yes.

Q. Will you draw that block in?

A. Approximately here, yes.

Q. Now, will you draw the lines in between the two blocks? A. Yes.

The Court: You have indicated the blocks by drawing circles, have you? A. Yes, sir.

The Court: Very well.

Mr. Toner: Could we call them "O-1" and "O-2" or something like that to distinguish between them?

Mr. Fall: Yes, we can do that. "O-1" then will be the lower block or the after block.

The Witness: Yes.

Mr. Fall: All right. We will mark this "O-1" and "O-2" will be the forward block. [59]

Now, was there a rope coming from the forward block to where you were standing? A. Yes.

(Testimony of Robert C. Johnson)

The Court: Has the witness indicated where he was standing?

Mr. Fall: No.

Q. Whereabouts were you standing?

A. I was standing in this comparatively vacant space, the one without any obstructions, just aft of this third athwartship beam.

Q. And between the upright stanchion indicated on this picture as the first stanchion on the left-hand side and the niggerhead?

A. The niggerhead, yes.

Q. Now, this shows a part of the niggerhead of the winch, doesn't it, right along these longitudinal beams?

A. Yes.

Q. It might be easier to show where you were standing on this picture. I show you Libelant's Exhibit 1. Can you put a cross on this picture to indicate just about where you were standing, or can you see it in that picture?

A. Well, let's see. There is the place right in there.

Q. Now, the "X" on Libelant's Exhibit 1 indicates the position where Mr. Johnson was standing just before the acci- [60] dent.

Now, will you go ahead and indicate on Libelant's Exhibit 8 the line from the forward block to the point where you were standing?

A. Well, I was standing approximately here.

The Court: Shall we mark that with some distinguishing mark?

Mr. Fall: Yes, I think so.

The Court: With the libelant's initials?

Mr. Fall: Yes. The initials "R. J." is the position or indicates the position where the libelant was standing

(Testimony of Robert C. Johnson)

at the time of the accident. He is working on Libelant's Exhibit 8 in evidence.

Q. Now, the line you have just drawn in is the line from the block to the point where you were standing?

A. Yes, the block to the point where I was standing.

Q. Now, then, let's see if we can get just the position of these lines, and how many times they went around the blocks. From where you were standing the line went to the forward block?

A. Yes.

Q. Went through the block, back to the lower block?

A. Yes.

Q. And then back up to the upper block?

A. Yes. [61]

Q. And then back to the lower block?

A. Yes.

Q. And then forward to where?

A. To the lower block. It was fastened there.

Q. It is fastened on the lower block. Now, does this picture showing a block in Libelant's Exhibit 5 in evidence show an attachment similar to the one that was on the upper block?

A. Yes.

Q. And the rope is tied or fastened on there?

A. Yes.

Q. Now, does this block also show what you call a shackle?

A. Yes.

Q. What is a shackle?

A. This. (Indicating)

Q. That is the metal on the upper end of the block?

A. Yes.

Q. We are referring, then, to Libelant's Exhibit 5. Now, when you started taking in the rope, where was the

(Testimony of Robert C. Johnson)

lower or the after block? Was it aft of any position seen in this picture of the boat, Libellant's Exhibit 8?

A. Yes. It was aft of there some distance. I don't know exactly how far we had worked forward to this point.

Q. But as you pulled in the rope, it would pull the [62] after block forward? A. Yes.

Q. And did Mr. Dudder carry that block in his hand?

A. Yes, he did.

Q. And as you pulled in the rope, he would walk forward with the block? A. Yes.

Q. Now, were you able to take in that rope freely at all times before the accident? A. Yes.

Q. And did Mr. Dudder pull on the block so it would jerk your rope or pull the rope that you were coiling?

A. No.

Q. And from the position you have indicated here at "O-1," were the ropes laying across the Maccano deck at all times prior to the accident? A. Yes.

Q. Now, does this picture show the forward davit in approximately the same position it was in on the day that you were injured? A. Yes.

Q. Had you used that forward davit at any time since the time you signed on the ship up to June 30th?

A. No.

Q. Had you used it on June 30th? [63]

A. No.

Q. Now, was that forward davit made fast?

A. Yes.

(Testimony of Robert C. Johnson)

Q. How was it made fast?

A. There are two guy lines on either side which come down to pad eyes on the deck and are made fast to secure the boom and prevent it from swaying from side to side.

Q. So there is one cable or wire pennant on each side, and that is fastened to the deck, and that holds it in position so that it just won't turn?

A. That is right.

Q. Now, is that the position it was in on the day you were injured?

A. Yes.

Q. Now, if these ropes between the two blocks are not kept in a taut position, would you be able to pull in the rope and pull the blocks together?

A. No.

Q. Why?

A. Unless they were in a comparatively taut position, they would foul on one another and it would be impossible for me to take in the slack.

Q. Now, the davit as shown in this picture is about how many feet aft of the forward athwartship beam of the Maccano deck? [64]

A. The first beam, it is two or three feet aft of the forward athwartship beam.

Q. Now, about how far away from the davit were the ropes between the blocks, or is that the closest place it would be before the accident occurred?

The Court: Would you please read that question?
(Question read.)

The Witness: Approximately three or four feet from the lines to the davit.

Q. By Mr. Fall: Were these lines between the two blocks ever lifted up in the air any distance at all after you started taking the blocks or bringing them together?

A. No.

(Testimony of Robert C. Johnson)

Q. Now, before the accident happened, were the ropes lying over this second athwartship beam and the third athwartship beam? A. Yes.

Q. I am referring, of course, and you are, to the ropes between the blocks? A. Yes.

Q. Now, you have the forward blocks there at approximately the first athwartship beam of the Maccano deck. Is that its approximate position?

A. Approximately.

Q. And is it approximately 30 feet from the forward [65] athwartship beam and the tip of the boom?

A. Yes.

Q. Did Mr. Dudder yell to you at any time before you were struck? A. No.

Q. And were any of the longitudinal or fore and aft beams in a position between the guy lines to the mast and the outer side of the Maccano deck, and that would be looking at Libellant's Exhibit 4, it is between this red line you have indicated as the guy and the outside side of the Maccano deck?

A. There are never any longitudinal beams between those two points.

Q. They don't put them outside of that particular point? A. No.

Q. Now, is there any way a man can walk fore and aft on this angle-iron on the edge of the Maccano deck?

A. It is possible but highly improbable. Those pad eyes would prevent a careful person from doing that.

Q. If you lost your footing—

A. The space between each pad eye is only enough space for a good foot, and you would have to walk one

(Testimony of Robert C. Johnson)

foot ahead of the other, and that is on the outside of the vessel and if a person should lose his balance, he would be off on the [66] side.

Q. Now, about how much room is there between the niggerhead shown in Libellant's Exhibit 1, pictured in No. 1, and this vertical stanchion here or support to the third athwartship beam? A. This distance?

Q. Yes. A. It is approximately four feet.

Q. And you were standing just forward of that, were you? A. Yes.

Q. And is the—

A. Forward of the niggerhead and forward of the third athwartship beam.

Q. Now, when you were standing there just before the accident, in the last thing you knew before the accident happened, what were you doing?

A. I was coiling the line on the well deck or the Maccano deck.

Q. Standing up or leaning over?

A. I was bending over.

Q. Then what happened?

A. That is all I remember.

Q. What is the next thing you knew?

A. The next thing I remember was putting my hand to [67] my head.

Q. Whereabouts were you at that time?

A. I don't know.

Q. Were you still on the deck of the ship?

A. I was still on the deck, yes.

Q. Do you know where on the deck of the ship you were? A. No.

(Testimony of Robert C. Johnson)

Q. What is the next thing you recall?

A. Someone taking hold of me, taking hold of my arm and taking me up to the purser.

Q. All right. Did you stay there very long?

A. Just long enough to call the ambulance from the first-aid station at Pearl Harbor.

Q. How did you feel at that time?

A. I was dazed, completely numb, and I had just a hazy recollection of what happened.

Q. And do you recall going to the emergency or first-aid hospital at Pearl Harbor?

A. Yes.

Q. And what did they do there?

A. They stitched the cut in my scalp.

Q. At that time were you still dazed or were you coming out of that daze?

A. I was still numb.

Q. Did it hurt you at all when they took the stitches?

[68]

A. I didn't even feel the stitches.

Q. And after the stitches were taken, what happened?

A. They sent me back to the ship.

Q. All right. I didn't ask you what time the accident happened.

A. It was in the morning about 9:00 or 9:30.

Q. And do you know what time it was when you got back to the ship after you had been to the first-aid station?

A. I don't recall exactly. I had to wait at the first-aid station for some time. I imagine it was 10:30 or 11:00 o'clock when I got back.

Q. How long did you remain on board the ship after that?

A. Overnight.

(Testimony of Robert C. Johnson)

Q. During that period how did you feel?

A. By that time the numbness had begun to wear off and I had a slight headache. My neck was stiff and I was dizzy and nauseated.

Q. Did that continue through the night?

A. Yes.

Q. What occurred the next morning, what did you do?

A. The next morning I went up to the first mate and told him I wanted to go ashore to have some X-rays taken.

Q. And what did you do then?

A. I called the regular outfit that picks fellows up [69] and takes them to the main gate at Pearl Harbor. I took the truck up to the main gate. This fellow from the ship helped me to catch the bus there into Honolulu.

Q. Then in Honolulu where did you go?

A. To the Public Health office.

Q. And what did they do to you?

A. He asked me how I felt and what happened and he examined me and put me in the hospital in Honolulu.

Mr. Toner: I am sorry. I didn't hear that.

The Witness: He asked me how I felt and what happened. He examined me and then he put me in the hospital in Honolulu.

Q. By Mr. Fall: You stayed there until about July 5th?

A. Approximately, yes.

Q. And was it about the day after you left the hospital that you went back to the Public Health office, the United States Public Health Office in Honolulu?

A. I don't recall whether it was that day or the next.

(Testimony of Robert C. Johnson)

Q. All right. You did go back? A. Yes.

Q. What did they do, if anything, at that time?

A. He removed the stitches from my head.

Q. Did he tell you anything about coming back?

A. No. He said I didn't need to come back.

Q. How were you feeling at that time? [70]

A. Well, I was feeling rested after being in the hospital. I still had a terrific headache and soreness of the neck and upper shoulders.

Q. How were you with reference to dizziness at that time?

A. Well, I was definitely dizzy and very unstable.

Q. Did you go back to the United States Public Health Service between that time and the time you left for the States?

A. Yes. I went back to get the clinical abstract to permit me to travel.

Q. Did they examine you or give you any treatment on that occasion? A. No.

Q. And about when was it that you left Honolulu for the United States?

A. It was about the 21st or 22nd, as I recall.

Q. I believe that the records show that you were paid maintenance from the 6th to the 22nd. Is that inclusive, Mr. Toner?

Mr. Toner: I believe it is.

Q. By Mr. Fall: I think if those receipts would show that you were paid up to the 22nd, then you didn't leave on the 21st, did you? A. That is right. [71]

Q. All right. How much a day did they pay you for the maintenance at Honolulu? A. \$2 a day.

(Testimony of Robert C. Johnson)

Q. How much did it cost you?

A. It cost me definitely over \$3.

Q. And when you caught or got on the boat, you say you left there on the 22nd, when did you arrive in San Francisco?

A. It was on a Sunday, the last of the month.

Q. Would that have been the 30th of July?

A. I don't recall whether it was on the 30th or not. I don't recall.

Mr. Fall: I left my calendar in my office.

Mr. Toner: There should be a calendar there for 1944.

Q. By Mr. Fall: July 30th was a Sunday, Mr. Johnson. Then, was it Sunday the 30th that you came in?

A. Yes.

Q. Were you able to contact anyone at Pacific Tankers on that date?

A. No, that was Sunday.

Q. Did you go to the Pacific Tankers then?

A. I went to Pacific Tankers the next day. It was the next day, Monday.

Q. What did you go there for?

A. I went there to get the month's wages I had coming to me. [72]

Q. And what, if anything, did they do? Did they send you any place?

A. They referred me to the insurance company.

Q. And whose office did you go to?

A. Mr. Black.

Q. The office of John Black?

A. Yes, Mr. Black.

(Testimony of Robert C. Johnson)

Q. To the office of an attorney. Do you recall that it was the office of an attorney? A. Yes.

Q. And when you went there, did someone see you?

A. Yes. I talked to some man in the office.

Q. Did you tell him what you wanted?

A. Yes.

Q. What did you tell him?

A. I told him that I come for my wages.

Q. And what, if anything, did he tell you?

A. Oh, he asked me how it happened.

Q. How were you feeling then?

A. Well, I had been resting on the ship. There was nothing to do, and I still had a headache, but the doctor in Honolulu told me I would have headaches for some time and not to be worried about them.

Q. And was there anything said about signing to get your wages? [73]

A. Yes. I had to sign some papers to get my wages.

Q. And would they pay you your wages without your signing these papers? A. No.

Q. And at that time did you know that if your injury arose out of the instance of any fellow servant, that you had a cause of action against the ship or its operators?

A. No.

Q. Did you know that if your injury was the result of any unseaworthiness of the ship that you had a cause of action against the ship or the operators of the ship?

A. Well, I thought there might be if some equipment was defective.

Q. Well, was there any defective equipment that caused this accident? A. No.

(Testimony of Robert C. Johnson)

Mr. Toner: May I have the answer read?

(Answer read.)

Q. By Mr. Fall: And whoever you talked with, did they tell you you were entitled to receive your maintenance until you were able to rejoin a ship, or until you reached your maximum degree of recovery?

A. No.

Q. Did you know that you had any right of action for maintenance at all during the time that you were unable to [74] work?

A. No.

Q. Were you unable to work on the date that you were in the offices of John Black in San Francisco?

A. Yes.

Q. And they paid you \$247 on that day or something like that?

A. Yes.

Q. After you left their office, what did you do and where did you go?

A. I went to San Diego.

Q. How did you go down there?

A. By train.

Q. When you came to San Diego, did you come to Los Angeles and then transfer trains to San Diego?

A. Yes.

Q. By the time you got to Los Angeles, how did you feel?

A. Well, I was feeling tired and I still had the headache and I was, well, generally ill all over.

Q. And when you got down to San Diego, how did you feel?

A. Just as bad and even worse.

Q. All right. When you got to San Diego, what did you do? [75]

A. I went to my folks there.

Q. All right. And did you go to bed or what did you do?

A. Yes. I went to bed and rested.

(Testimony of Robert C. Johnson)

Q. How did you feel? I will withdraw that. How long did you remain in San Diego then, approximately?

A. Approximately a week or a week and a half.

Q. And during that period how did you feel?

A. Well, I didn't feel so well. I still had the headache and dizziness and nausea at times.

Q. And during that time did you remain in bed?

A. Yes.

Q. And at the end of this week and a half or thereabouts, did you have any occasion to come to Los Angeles?

A. Yes.

Q. What was the occasion?

A. Well, I wasn't getting any better and I didn't know what to do for the headache that was so bad that aspirin wouldn't help it. I came up here to the Public Health Service.

Q. And when you came up here to the Public Health Service, was that in this building?

A. I don't recall whether it was or not.

Q. Anyway, what did they do?

A. They examined me and asked me how it happened and [76] put me in the hospital.

Q. And about how long did you remain in the hospital?

A. Approximately a week.

Q. How did you feel during that time?

A. Well, I was in bed the whole time and felt rested. I still had my same ailments.

Q. Then, after you had been at the hospital a week, what occurred?

A. Well, they sent me to the Seaman's Rest Center at Santa Monica.

(Testimony of Robert C. Johnson)

Q. Is that a hospital up there too?

A. It is a rest center with a doctor in charge and a nurse or two.

Q. And how long did you remain there?

A. I stayed there six weeks.

Q. And what was the occasion of your leaving?

A. Well, I had to leave. The three weeks were up that I was allotted, but as the doctor recommended an additional three weeks, it was granted—but no more than six weeks is allowed.

Q. Now, during that time that you were there, tell us how you felt.

A. Well, I still had my same old ailments. It was a quiet place, but it was cold and I had difficulty walking around. It is a beautiful place, but I didn't feel any better [77] than I had before I had even got there.

The Court: Which place?

The Witness: The rest center in Santa Monica.

Q. By Mr. Fall: It was up in the Palisades, was it?

A. Yes.

The Court: Are you talking about the place where you rested six weeks?

The Witness: Yes, sir.

Q. By Mr. Fall: Then, on October 1st you left the rest center? A. Yes.

Q. Where did you go from there?

A. I went to San Diego.

Q. You stopped by to see me on the way down, didn't you? A. Yes, I did.

Q. That was the first time you had seen me, wasn't it? A. Yes.

(Testimony of Robert C. Johnson)

Q. Anyway, you went on to San Diego then. Did you get down there the evening of the 1st? A. Yes.

Q. You wrote to your father, didn't you?

A. Yes.

Q. And when you got to San Diego, what did you do, go to bed or were you up and around? [78]

A. Yes. I went to bed for—I don't know—several days.

Q. Now, did you have any occasion down there to go to the United States Public Health Service shortly after your returned to San Diego?

A. Yes. I went to the offices of the Public Health Service.

Q. What did they recommend you should do?

A. They asked me if I had been in any hospitals, and which ones, and asked me if I did not want to go up to the Marine Hospital in San Francisco.

Q. Well, you didn't go to the Marine Hospital in San Francisco, did you? A. No.

Q. After you had been there a short while your mother took you down to Texas? A. Yes.

Q. I believe that is Sabinal, Texas. A. Yes.

Q. Your family have a farm or a ranch there?

A. Yes. They have a ranch there.

Q. And did you go down there and stay on this ranch?

A. Yes. I stayed there at the ranch.

The Court: Let me interrupt here a minute.

Mr. Fall: Yes. [79]

The Court: Do I understand that some physician advised you to enter the United States Marine Hospital at San Francisco?

(Testimony of Robert C. Johnson)

The Witness: He asked me if I did not want to go up there.

The Court: Well, did he tell you why he was making that suggestion or asking the question?

The Witness: No.

The Court: Well, was this a physician to whom you were talking?

The Witness: Yes. It was one of the doctors for the Public Health Service.

The Court: Located where?

The Witness: San Diego.

The Court: And you told him about this condition?

The Witness: Yes. I told him what happened and about the hospitals I had been in.

The Court: You told him how badly you felt?

The Witness: Yes, and I asked him for some medicine.

The Court: Well, was it in the course of that interview that he asked you whether you would go to the United States Marine Hospital at San Francisco?

The Witness: Yes.

The Court: Well, didn't you understand why he was asking you that? [80]

The Witness: I didn't exactly understand why he was asking me and I couldn't see why I should go all the way back up to San Francisco after I had just come out of a hospital in a rest center.

The Court: When he asked you that question, what did you say to him?

The Witness: I told him I would rather not go.

The Court: Why didn't you want to go? What did you think would happen to you up there? What did you think they would do to you up there?

(Testimony of Robert C. Johnson)

The Witness: I didn't know what they would do.

The Court: Why didn't you want to go, then?

The Witness: Because, to my reasoning, after being in two hospitals and a rest center, if they couldn't find out what was the matter, why, I couldn't see going back to another hospital. It was just one doctor's opinion against a half dozen or more that I had seen already.

The Court: Well, then, is it your idea that since you have seen a number of doctors you should quit consulting doctors; or what do you mean?

The Witness: Well, after I had seen so many doctors and got no relief, rest seemed to be the best thing for me. I felt better when I could get away from all noise and just rest and enjoy people that I know and things that I had done.

The Court: Very well. [81]

Q. By Mr. Fall: Was it your idea to get out on the ranch in Texas so you could be away from things and in a quiet place?

A. That's right.

Q. And did you go down there some time in the latter part of October?

A. Yes, in October.

Q. And you stayed down there until when?

A. Until January.

Q. And then you came back to San Diego, did you, then?

A. Yes.

Q. And while you were in Texas, did you have occasion to go to the United States Marine Hospital in Galveston?

A. Yes. I went down to get some medicine down there.

(Testimony of Robert C. Johnson)

Q. When you left San Diego had they told you where to go when you went to Texas?

A. Yes. They said there was a public health office in Galveston.

Q. And did they tell you to go there? A. Yes.

Q. That is the office in San Diego told you to go there in Galveston? A. Yes.

Q. And when you left the rest center in Santa Monica, did they tell you to go to the United States Public Health [82] Service in San Diego? A. Yes.

Q. Now, did you get any apparent relief when you were down there in Texas?

A. Yes, I got some relief. It was quiet there and I was with some people I had known and I took modest exercises and medicine as I needed it, and I did feel better.

Q. And you came back up to San Diego in January of this year? A. Yes.

Q. And do you recall of having the—or do you recall everything you did during the days that you were down there in Texas?

A. Well, there were times when I don't remember certain things. It was just a blank. People said that I would do odd things.

Q. Now, have those spells become less frequent now?

A. Less frequent, yes.

Q. About how long ago was the last one you had?

A. Oh, about a month or six weeks ago.

Q. Now, during the period from January up to the present date, have you lost any weight? A. Yes.

Q. About how much do you weigh now?

A. About 121. [83]

(Testimony of Robert C. Johnson)

Q. How much did you weigh before this accident?

A. 150.

Q. And with reference to your instability, is that any better than it was?

A. It is some better. Now and then I start to go through a door and hit the side of the jamb with my shoulders as I walk, but generally it is better.

Q. How about your dizziness? Has that seemed to get better?

A. Well, if I restrict myself to doing nothing, no strenuous exercises, fast speeds or heights or bending over, or things of that sort.

Q. If you bend over fast, what happens?

A. Why, I just have to pick myself up.

Q. And if you try to walk fast, what occurs?

A. Well, at moderate speed it seems all right.

Q. Have you tried to walk fast?

A. Not any too fast, because the less I jar my head, the better I feel.

Q. All right. Referring to jarring your head, as you walk along do you have any sensation at all in your head, and if so what is it?

A. Oh, it is hard to explain. I just see things and I think they are in one place and I get up there and they are some place else. I don't know. I guess it is me. [84]

Q. Now, referring to jarring your head as you walked, as you come down on your heels, what sensation do you get in your head?

A. Oh, sort of a buzzing sensation with a terrific headache.

Q. And these headaches continue?

A. Oh, yes.

(Testimony of Robert C. Johnson)

Q. Are they any better now than they were six months ago.

A. The only thing is that the more terrific headaches have tapered off and don't come as often as they did, but I still have them all the time.

Q. Did Mr. Dudder tell you what struck you on the head?

Mr. Toner: Just a moment. If the court please, I should like to object to anything Mr. Dudder told him on the ground that counsel is attempting to obtain a possible admission by a fellow servant, and the authorities seem to be opposed to counsel's views on the subject that such admissions are admissible.

Mr. Fall: The idea of that question, Mr. Toner, was not for the purpose of any admission, but was to bring out what had struck him on the head and for that purpose only.

Mr. Toner: All right.

The Court: You have no objection to that? [85]

Mr. Toner: I have no objection to what struck him on the head.

Mr. Fall: The deposition shows it.

Mr. Toner: I think we can concede that he was struck on the head by the block.

The Court: Was that a large block weighing about 40 pounds?

Mr. Toner: There are various estimates, if the court please. There are estimates of from 15 to 40. Mr. Fall is on the high side and there are other estimates of about 25.

Mr. Fall: I am on the high side because I lifted one about a week ago.

(Testimony of Robert C. Johnson)

Q. By Mr. Fall: Mr. Johnson, did you have occasion to lift a 10-inch block here a couple of weeks ago on the Crater Lake which was just like the block you were working on on the day you were injured?

A. Yes.

Q. And about what was the weight of that block with ropes and the shackle on it?

A. I would say between 35 and 40 pounds.

Q. Now, in what respect does this block you referred to recently differ from the block you think hit you at the time of the accident?

A. There was no appreciable difference. They were both double sheave blocks. Both had the four lines running [86] through them, and they both had the shackle to the after block.

The Court: May I inquire, is it conceded that the witness was struck by a block, and that this particular block at the time of the accident was being carried by a fellow-employee named Dudder?

Mr. Toner: Yes, if the court please.

The Court: That is conceded?

Mr. Fall:—Yes.

Mr. Toner: And I would believe that irrespective of the fact that the block weighed different amounts according to whether they are wet or dry, or whether the ropes are wet or dry, or whether they are worn or broken, I would say that the average estimate of the weight of the block would be 25 to 35 pounds.

Mr. Fall: I think the block itself would weigh that, but the additional weight of the ropes would account for the difference, I think, that Mr. Johnson has testified to and the difference—

(Testimony of Robert C. Johnson)

Mr. Toner: I can't see any particular materiality in the difference between—

The Court: I am inclined to think it doesn't matter.

Mr. Fall: I don't think it does either.

The Court: I am inclined to agree.

Mr. Fall: How late does your Honor want us to go, your [87] Honor.

The Court: Well, how much further time do you expect to need with the direct examination?

Mr. Fall: I think I am about through with Mr. Johnson now.

The Court: Why not conclude with his direct examination, then?

Mr. Fall: I think there is nothing else that I have to ask him. I don't think I have forgotten anything. If I have, why, I will ask the court for leave to ask the other questions, but I do believe that I have covered everything that I had in mind.

The Court: What would you estimate would be the duration of your cross examination?

Mr. Toner: I might well finish cross examining by 5:00 o'clock. I think I should try to.

The Court: Well, let us make some progress anyway.

Cross-Examination.

By Mr. Toner:

Q. Now, Mr. Johnson, how old are you?

A. 27.

Q. You were born in Sabinal, Texas?

A. Yes.

(Testimony of Robert C. Johnson)

Q. How long have you lived in Sabinal?

A. Oh, I have lived there for seven or eight years.

[88]

Q. Did you go to school there? A. Yes.

Q. What school did you go to?

A. Elementary school.

Q. How far along in school did you go?

A. Well, I changed residences, or rather, my parents did and I changed states as they did.

Q. Where did they move to? A. Arizona.

Q. And how far did you go to school in Arizona?

A. One year at the university.

Q. What university?

A. The University of Arizona.

Q. What type of college work were you doing?

A. I was taking business administration.

Q. When did you go to the University of Arizona?

A. The term of 1938 and 1939.

Q. And what did you do after that?

A. Then I left there and went up to a town called Miami where my parents were.

Q. Miami, Arizona? A. Yes.

Q. What did you do in Arizona?

Mr. Fall: To which I am going to object on the ground that this is improper cross examination. I don't believe it [89] tends to prove or disprove any issues before the court or tends to disprove or enlighten any of his former testimony.

The Court: Well, you might indicate the theory on which you are asking this line of questions.

(Testimony of Robert C. Johnson)

Mr. Toner: Well, if the court please, the witness has signed a release which he is claiming he did not understand. I think I am entitled to show his background, his education, and his ability to understand.

Mr. Fall: There is no such testimony here before the court that he did not understand that he was signing a release.

Mr. Toner: If the court please, I might differ with counsel on that score. He testified he was signing a receipt for his services, and this so-called receipt for his services is a perfectly clear document written in the English language. It says "release" and I believe that we are entitled to prove that the man knew what he was doing and was perfectly capable of understanding what he was doing when he signed the release.

Mr. Fall: Counsel, is it your position that he signed one document or one paper?

Mr. Toner: He signed several papers.

Mr. Fall: All right. He signed a receipt, didn't he? Of course he did.

Mr. Toner: The paper, I believe, will speak for itself, [90] if the court please.

Mr. Fall: Will you produce all the papers he signed?

Mr. Toner: I think they are in evidence already.

The Court: I will allow the question.

Q. By Mr. Toner: What did you do in Miami?

A. I worked for the Niagara Copper Company.

Q. What kind of work were you doing?

A. I was in the crushing department.

The Court: You mean working as a mechanic?

The Witness: Well, I can't explain exactly. I was belt man for a while, working on the belt.

(Testimony of Robert C. Johnson)

Q. By Mr. Toner: Did you do any other work prior to entering the Merchant Marine?

A. Yes. I worked for Consolidated Aircraft.

Q. Where? A. San Diego.

Q. What type of work were you doing there?

A. I worked as a general metal mechanic.

The Court: During what period is this?

The Witness: That was in the fall of 1941 and the early spring of 1942.

Q. By Mr. Toner: What other work did you do prior to entering the Merchant Marine?

A. That is all.

Q. In other words, you worked in the mine at Miami, [91] Arizona? A. Yes.

Q. And you worked at Consolidated Aircraft Company at San Diego? A. Yes.

Mr. Toner: If the court please, might I have the exhibit that is a transcript of the clinical record at Galveston? Is that here?

The Court: The Clerk has that.

Mr. Toner: I believe that is Libelant's Exhibit 20.

Q. By Mr. Toner: Now, I show you Libelant's Exhibit 20 and I would like to have you read under the paragraph "Condition of patient under admission." Would you read that into the record, please?

A. "He was seen in the outpatient office in San Diego on October 5, 1944, and states he was given treatments for headaches. He visited his father in California and then came to his old home in Sabinal, Texas, where he stayed at a ranch with relatives. While there he was seen by a private physician and given treatments."

(Testimony of Robert C. Johnson)

Q. Now, did you tell the doctor at Galveston that you were visiting your father in California? A. No.

Q. That statement is incorrect, is it?

A. Yes. I had come from California, but I was visiting at the time in Sabinal.

Q. You don't regard Sabinal as your home, is that it?

A. That is right.

Q. What do you regard as your home?

A. San Diego, where I have been living.

Q. I just wanted to clear that up. There was perhaps an error in the record there.

Now, how long were you in the Merchant Marine prior to this accident?

A. Let's see—a little over two years.

Q. When did you enter the Merchant Marine?

A. The fall of 1942.

Q. Now, when you were talking to Mr. Frick, did he ask you any questions?

Mr. Fall: Who is Mr. Frick?

Mr. Toner: I am sorry.

Q. By Mr. Toner: When you were talking to the gentleman you saw in Mr. Black's office, did he ask you any questions?

A. Yes. He asked me how the accident happened.

Q. Do you know that gentleman over there? (Indicating) A. Well, his face looks familiar.

Q. Is that the man you talked to in Mr. Black's office? [93]

A. I wouldn't say that it was or was not.

Q. Did he ask you any questions, the gentleman you spoke to? A. Yes.

(Testimony of Robert C. Johnson)

Q. What did he ask you?

A. He asked me how the accident happened.

Q. What did you tell him?

A. I told him how the accident happened, is it was told to me.

Mr. Fall: May I have the answer read?

(Answer read.)

Q. By Mr. Toner: And did he ask you how you were feeling?

A. I believe he did.

Q. What did you tell him?

A. I told him—I don't recall what I told him.

Q. Did you tell him you were all recovered?

A. No, I did not.

Q. You say you did not tell him you were fully recovered?

A. Yes.

Q. Did he ask you to sign a written statement as to the facts of the accident?

A. Let me see—I believe there was such a statement.

Q. Did you sign it? [94]

A. I signed some papers, but I don't know what it was.

Q. Did you read the papers that you signed?

A. Yes. I read—there were some yellow papers that I glanced through.

Q. Were they correct, the papers that you signed, were they correct at the time?

A. I don't recall. All I know is that I signed them.

Mr. Fall: Counsel, if you have any written statement, I would like to see it.

Mr. Toner: I will get it out in just a moment, counsel.

(Testimony of Robert C. Johnson)

Q. By Mr. Toner: I show you Respondent's Exhibit A. Mr. Johnson, is this your signature?

A. Yes.

Q. Did you sign that statement? A. Yes.

Q. And did you sign it on the day that you were in Mr. Black's office? A. That is right.

Q. Would you read that to the court, please?

A. Read the whole thing?

Q. Yes, please. A. All right.

"I, Robert C. Johnson, signed on the S. S. 'Mission Soledad' as a seaman on March 25, 1944, at San Pedro, Cali- [95] fornia; for a foreign voyage. I reside at 1430 South 28th Street, San Diego, California.

"On June 30, 1944, while the vessel was at Pearl Harbor, Honolulu, at about 8:35 a. m., we were stowing the forward port boom, and while we were doing this I was struck in the head by an object which I was afterwards told by others was a block which I understood was dropped by one of the seamen who was standing above me on one of the cross beams.

"I was hospitalized at Queen's Hospital from July 1 to July 6, and then remained ashore until July 22, during which time my expenses were paid, and I boarded the S. S. 'Philippa' on that date and sailed the same day, arriving in San Francisco on July 30.

"When I paid off the S. S. 'Mission Soledad' I received all of my straight wages, overtime and bonuses up to and including July 1, 1944.

"I am now fully recovered from my injury.

"I have read the foregoing statement, and it is true and correct in all respects."

(Testimony of Robert C. Johnson)

Q. Was that statement true and correct when you signed it? A. To the best of my knowledge, yes.

Mr. Toner: I should like to have this marked—

The Court: You are offering this?

Mr. Toner: I would like to offer that as Respondent's [96] Exhibit A.

The Court: This document just read by the witness will be marked as Respondent's Exhibit A.

Mr. Toner: Now, I should like to have this document marked for identification.

Mr. Fall: That is the release? We have no objection.

Mr. Toner: I would like to offer that.

The Court: This document entitled "Full Release of All Claims and Demands," bearing the date July 31, 1944, will be admitted as Respondent's Exhibit B.

Mr. Toner: And while the Clerk is marking that for us, I would like to offer this as Respondent's Exhibit C.

Mr. Fall: We have no objection. You are offering that in evidence?

Mr. Toner: Yes.

Q. Mr. Johnson, I would like to have you read from Respondent's Exhibit B, commencing with the wording "The undersigned does hereby affirm." Would you read that into the record, please, and continue down through your second signature? A. Yes.

"The undersigned does hereby affirm and acknowledge that he has read over the foregoing Release and has had the same fully explained to him and fully understands and appreciates the foregoing words and terms and their

(Testimony of Robert C. Johnson)

effect, and being en- [97] tirely satisfied with the settlement herein made, has affixed his signature hereto voluntarily and of his own free will and accord.

"Do you understand that signing this paper settles and ends every claim for damages, as well as for compensations, maintenance, cure and wages? A. Yes."

Q. And you signed that on the 31st of July in Mr. Black's office? A. Yes.

Q. Did you understand what it meant at that time?

A. It meant that unless I signed this I couldn't get the money that was coming to me.

Q. Did you understand that signing this release was a full settlement of all your claims?

A. At that time I did not know I had a claim.

Q. Well, did you understand that it was a full settlement of all your claims? A. Yes.

The Court: Just a moment. You are referring to exhibits—

Mr. Toner: A and B.

The Court: This check in the amount of 247.10 will be admitted as Respondent's Exhibit C.

Q. By Mr. Toner: It is conceded that you signed this check? [98] A. Yes.

Q. That is your signature? A. Yes.

Q. Would you read the typing immediately above your signature, please? A. Yes.

"In full satisfaction of all claims and demands against the S. S. Mission Soledad for injuries sustained by me on or about the 30th day of July, 1944, as per release of even date."

(Testimony of Robert C. Johnson)

Q. And that appears on Respondent's Exhibit C, is that right? That appears on the cancelled check?

A. Yes.

Mr. Fall: We stipulate that it does.

Q. By Mr. Toner: This is the check that you got at Mr. Black's office? A. Yes.

Q. Where did you get the check that I just showed you, Mr. Johnson? Did you get it in Mr. Black's office or the office of Pacific Tankers?

A. No. I believe it was the secretary in the insurance company office that typed it out and handed me the release to sign.

Q. Now, in addition to the amount that you received, you also received a repatriation bonus, did you not? [99]

A. Yes.

Q. How much was that? A. \$17, I think.

Q. And you stated you went to Mr. Black's office for the purpose of getting some wages that were due you?

A. Yes.

Q. How much did you feel was due you in the way of wages?

A. A month's pay and whatever bonus there was between San Francisco and Honolulu.

Q. That was all you figured you were entitled to?

A. Yes.

Q. A month's pay and the bonus that you had coming from Honolulu to San Francisco? A. Yes.

Q. How much was your base rate for a month?

A. \$107.50.

(Testimony of Robert C. Johnson)

Q. One day of that had been paid already in Honolulu, had it not? A. No, I don't think so.

Q. You were paid on the second of July in Honolulu, were you not?

A. Oh, yes. I don't recall the date. I know I received a check for the amount of money I had coming up to that date. [100]

Q. Yes, and that was approximately on the 2nd of July, was it not?

A. It was the day I got out of the hospital. Was that the day?

Q. I show you a paper which has been marked for identification as Respondent's Exhibit L, and ask you if that is your signature. A. Yes.

Q. Is that a statement of your wages for March 25, 1944, to July 1, 1944? A. Yes.

Mr. Fall: Counsel, we will stipulate to that.

Mr. Toner: May I offer this in evidence?

Mr. Fall: Exhibit C was the check wasn't it?

Mr. Toner: Yes.

The Court: This document will be marked as Respondent's Exhibit D.

(The document referred to was received and marked Respondent's Exhibit D for identification.)

Mr. Toner: If the court please, I have a few more exhibits here that would take me a minute or so to run

(Testimony of Robert C. Johnson)

through and I can just as easily offer them in the morning.

The Court: Yes, and perhaps you might help the Clerk find the documents.

Mr. Toner: I have them all in duplicate in case any of [101] them have been lost in the shuffle.

Mr. Fall: I might say with reference to having the reporter type off the descriptions given by the libelant for each one of these pictures, I believe after the first two we were able to eliminate a lot of the details so that I doubt very much whether it would be necessary for us to get together. We can just have her type that up. I think everything after the first two was a certain picture taken from a certain place of a certain thing.

The Court: Well, might we ask the reporter to type out slips in duplicate and let counsel examine them in the morning and determine whether or not they are in proper form to be attached to the photographs, and if not indicate what corrections should be made?

Mr. Toner: I think that is an excellent idea, your Honor.

The Court: Very well. Then, we will adjourn until 10:30 tomorrow morning.

(Whereupon, at 4:40 o'clock, p. m., an adjournment was taken until 10:30 o'clock, a. m., Wednesday, November 14th, 1945.) [102]

Los Angeles, California; November 14, 1945; 10:30 O'Clock A. M.

The Court: May I ask Government counsel, in view of the fact that hostilities have ceased, whether there is any necessity for continuing the order which was originally made that these files be kept in secret files?

Mr. Toner: There is no further need, your Honor, for secrecy. The secrecy order was due to war security. There being no more war, officially, I do not think we have to worry about it any longer.

Mr. Fall: I agree with that statement, your Honor.

The Court: I think Mr. Johnson was on the stand.

Mr. Fall: Yes. Will you please take the stand again, Mr. Johnson?

ROBERT C. JOHNSON,

the witness on the stand at the time of adjournment, resumed the stand and testified as follows:

Mr. Fall: At this time, your Honor, I would like to ask Mr. Johnson a few more questions on direct examination. I spoke to Mr. Toner and he thought it might be better for me to ask him those questions now and then he can proceed with his cross examination as soon as I complete the questions, if that is agreeable with the court.

The Court: Very well.

Direct Examination (Continued). [103]

By Mr. Fall:

Q. Mr. Johnson, when you got into San Francisco on the 30th day of July, 1944, did you contact the Marine Hospital or any doctors?

A. I contacted the Marine Hospital.

(Testimony of Robert C. Johnson)

Q. In San Francisco? A. In San Francisco.

Q. By what? A. By telephone.

Q. Did you have any conversation with them relative to your going out there for further treatment?

A. Yes, I called them up and told them that I was a repatriated seaman, and he stopped the conversation and talked to someone, and someone else came on. They asked me how I felt, and I told them I had a headache, but the doctor said I would have a headache.

He asked me how else I felt. I said, "Well, I feel rested."

And he said, "Well, we are pretty busy out here. If you don't feel you are in need of hospitalization," he says, "you don't need to come out."

And that ended the conversation.

Q. So you didn't go out? A. No, I didn't.

The Court: Was this on the same day that the ship ar- [104] rived?

The Witness: Yes, your Honor.

By Mr. Fall:

Now, had you filed your income tax returns on a cash basis or an accrual basis prior to this time?

A. On a cash basis.

Q. And at the time you went into the offices of John Black in San Francisco, some man took a statement from you or asked you how the accident happened?

A. Yes.

Q. And they had this typed out, did they?

A. Yes.

Q. And this is what you signed? A. Yes.

Q. As well as another paper which was the release?

A. Yes. I think there were four or five of them.

(Testimony of Robert C. Johnson)

Q. And when you talked with this man in the office, what did you say and what was said by him with reference to what money you had coming?

A. Well, I knew I had my wages coming for the month that had just passed, and that is what I went to the office to get. He took my statement, had me sign it, and said to go out and have the secretary type the check.

I said, "Well, on account of this accident I am missing—the ship is going on into a war zone and the bonus that I [105] would be entitled to I would be missing, and I said, "I think that is coming to me. I would have earned it."

He said, "Well, how much do you think that would be worth," and I says, "I don't have any idea because that is an open conjecture."

He said, "How about \$100?"

I said, "I don't know how long the ship would be out in the war zone, but that seems a low figure."

He says, "Well, \$150?"

And I said, "All right."

Q. Was anything at all said about paying you anything for any injuries that you had sustained?

A. No word was ever said about injuries.

Q. After you signed the release you were given a check?

A. Yes.

Q. Were you told at the time you signed the release that there was going to be an additional waiver or release typed on the back of the check that you would have to sign before, or indorse before, you would get a penny?

A. No.

(Testimony of Robert C. Johnson)

Q. Were you ever paid your transportation from San Francisco to Los Angeles, the point where you shipped?

A. No.

Q. Did you know that you had any cause of action [106] against the ship at that time? A. No.

Q. Did you know that you would be entitled, or were entitled, to more maintenance in Honolulu than you were paid? A. No.

Mr. Toner: Just a minute, if the court please. I would like to object to the question as rather assuming a conclusion. It is certainly leading and it is assuming a controverted issue. We call that sometimes begging the question.

Mr. Fall: Suppose we put into evidence at this time Operations Regulation No. 108 of the War Shipping Administration, with reference to the amount of maintenance for unlicensed seamen.

At this time we offer in evidence a copy of Operations Regulation No. 108 of the War Shipping Administration, pertaining to all vessels owned by or under bareboat charter to War Shipping Administration; subject: Amounts to be paid as maintenance under the doctrine of wages, maintenance and cure.

"Effective from August 1, 1945, maintenance shall be paid—"

The Court: Effective what date?

Mr. Fall:—Effective August 1, 1945.

The Court: 1945? [107]

Mr. Fall: Yes. This will be important because it is a recognition by the War Shipping Administration of the reasonable amount of maintenance that should be paid to a seaman.

(Testimony of Robert C. Johnson)

Now this is actually effective—

Mr. Toner: This is 1945.

Mr. Fall: Of course we are in this case claiming maintenance subsequent to August 1, 1945, and this is a recognition of the fact of what is a reasonable amount of maintenance, and that is the amount that the seaman is entitled to.

The Court: Has counsel seen this?

Mr. Toner: I have not seen it as yet.

Mr. Fall: I am sorry. I thought you were familiar with that.

(Exhibiting document to counsel.)

Mr. Toner: If the court please, there is no objection to the receipt of that copy of what it purports to be, if it is offered for the purpose of showing what the situation may have been after July 18, 1945, when it is dated, and effective August 1, 1945. It has no bearing whatsoever on the situation in 1944 certainly.

Mr. Fall: This is a definite inference, your Honor. It is a recognition by the War Shipping Administration of what is a reasonable amount of maintenance, and I think we have a case coming down in the United States Circuit Court of Appeals for this Circuit—it will be down very shortly— [108] indicating that the reasonable amount is the amount that a seaman is entitled to receive.

Mr. Toner: There is an equal inference, if the court please, that when you make an order you are changing the existing situation.

Mr. Fall: I don't know of any previous order. I asked if there was and the War Shipping Administration advised me that there was no previous order that they

(Testimony of Robert C. Johnson)

could find in their records. That is something I don't know of my own knowledge.

The Court: It occurs to me, in the final analysis, it will become a matter of argument as to what inference should be drawn from the issuance of the order in question, so I will admit it. That will be Libelant's exhibit next in order.

The Clerk: No. 22, your Honor.

(The document referred to was received in evidence and marked Libelant's Exhibit No. 22.)

By Mr. Fall:

Q. Mr. Johnson, had you been advised by any doctors as to your condition after you saw the doctors at the United States Public Health Service in Honolulu up to the time that you signed this release? A. No.

Q. Had you been advised by any legal counsel as to your rights at the time of the signing of your release? [109] A. No.

Q. Had you talked with any attorney relative to your rights prior to signing your release? A. No.

Q. As a matter of fact, that portion of the statement that said you had completely recovered from your injuries, was that a fact, that you had recovered on July 31 of 1944? A. No.

Q. Did you have any headaches after that date?

A. Yes.

Q. Had the doctors previously advised you relative to your headaches?

A. Yes. They said that I would have headaches for some time but that they would pass away.

(Testimony of Robert C. Johnson)

Q. And at that time, on the 31st day of July, 1944, what did you believe your condition to be?

A. I believed myself well except for the headaches, which would pass.

Q. Now with reference to your continuing in the Merchant Marine at the time that you signed this release, had you anticipated continuing? A. Yes.

Q. In any particular branch?

A. Yes, I was going to mate school and qualify as a third mate. [110]

Q. Do you know the approximate earnings of a third mate? A. Approximately \$225.

Q. In addition to that, he gets his room and board? He lives on the ship? A. Sure.

Q. He gets that in addition to what he is paid in cash?

A. Yes.

Q. How long does it take to go through this maritime school for mates? A. Four months.

Q. Are you paid during that schooling?

A. Yes. There is an amount paid, but I don't know how much it is.

Mr. Fall: That is all that I have, Mr. Toner. That completes my direct examination.

Cross-Examination.

By Mr. Toner:

Q. Now, Mr. Johnson, you testified yesterday that when you came to Mr. Black's office you expected to get your month's wages, plus your repatriation bonus, did you not? A. Yes.

(Testimony of Robert C. Johnson)

Q. And you testified this morning that you expected to get in addition to that some additional bonus, is that right? [111]

A. I hadn't expected it when I went there; no.

Q. You talked this over with Mr. Fall last night, didn't you? A. No.

Q. You didn't talk this over with Mr. Fall last night?

A. No, I did not.

Q. You are sure about that? A. I am sure.

Q. You testified yesterday that the statement was correct, did you not? A. Yes.

Q. As you signed it? A. As I signed it.

Q. And that is what you told Mr. Frick, the gentleman you spoke to in Mr. Black's office?

A. As I believed it then; yes.

Q. And you testified this morning that the statement was not correct, is that right?

A. At the time I signed it it was correct as I felt it was correct.

Q. That is what you told him? A. Yes.

Q. Did you discuss the statement with Mr. Fall last night? A. No, sir. [112]

Q. Yesterday afternoon? A. No, sir.

Q. Now you also testified that you were paid your wages that were earned on the ship up to the time you left the ship.

A. I was paid that in Honolulu; yes.

Q. You were paid that in full in Honolulu?

A. Yes.

Q. And then you were also paid the wages that you earned or didn't earn, the wages that you were entitled

(Testimony of Robert C. Johnson)

to at the end of July, is that right? You were paid the wages for July? A. Yes.

Q. That amounted to how much, approximately?

A. The base pay is \$107.50.

Q. Would you say that a figure of about \$103.92 would be approximately correct, considering the fact that you got some of July's pay at Honolulu? Would you say that that was about correct? A. I don't know.

Q. Your base pay was \$107.50, was it not?

A. Yes.

Q. And there were taxes deducted from that?

A. Yes.

Q. Would you say that you were entitled to a figure [113] of approximately \$97.10 as wages for the month of July?

A. Well, I don't know how much tax deductions were, but I imagine that is reasonable.

Q. It is approximately right, is that right?

A. Yes.

Q. How much were you paid as consideration—strike that.

How much was the check that you were given in San Francisco? A. \$247 and some cents.

Q. As a matter of fact, it is \$247.10?

The Court: Whatever the check says.

Mr. Fall: The check is there. We will stipulate whatever it indicates on its face.

(Testimony of Robert C. Johnson)

By Mr. Toner:

Q. That is exactly \$150 more than the \$97.10 figure that we are discussing, or that we were discussing just a moment ago?

A. Whatever it is, added on top, and if it comes to that, that is right.

Q. As a matter of fact, when you were talking to Mr. Frick, after discussing the fact of the wages, you stated that you felt you had something coming for your injury, did you not? A. No, I did not. [114]

Q. As a matter of fact, you asked for \$150 for injuries, didn't you? A. I did not.

Q. You deny that you didn't?

A. I deny that.

Q. Did you discuss the accident at all with Mr. Frick?

A. Yes, he asked me how it happened.

Q. You told him that you were fully recovered?

A. Yes.

Q. What was this \$150 payment for?

A. As I just finished repeating, we both talked it over and agreed that that would be what I would have earned in bonus had I still been on the ship.

Q. You didn't remember anything about that last night, did you, when you were testifying, or yesterday afternoon?

A. I don't remember the subject coming up. Read it back and let me hear what it says.

Q. As I recall it, yesterday afternoon you went into San Francisco to get your wages and your repatriation bonus. A. Yes.

(Testimony of Robert C. Johnson)

Q. And that was all you felt you were entitled to.

A. Yes, at that time.

Q. Were you put to any expense for any medical service that you received in these various places?

A. What do you mean by "various places"? [115]

Q. Well, the United States Public Health Service at San Diego, and Honolulu, and Los Angeles, and Pacific Palisades and the French Hospital in Galveston?

A. No.

Q. You had no medical expense?

A. No.

Q. You were living at home, were you?

A. Yes.

Q. When did you go to Sabinal?

A. Last October, the first part of the month some time.

Q. What was the purpose of the trip?

A. To rest and try to regain my health.

Q. Who went with you?

A. My mother.

Q. How did you go down there?

A. She drove me down.

Q. In your car? A. Yes.

Q. Do you drive your car? A. No.

Q. How long has it been since you drove your car?

A. Oh, I can't say exactly.

Q. When is the last time you drove your car?

A. About three weeks ago. [116]

Q. About how often are you able to drive a car?

A. Not very often and not for long periods. It is too much of a strain, with the traffic, and I might get dizzy and run into somebody. I would rather not drive.

(Testimony of Robert C. Johnson)

Q. How long did the trip to Sabinal take you?

A. The way we traveled, approximately a week.

Q. How far is it?

A. Oh, about 1500 miles.

Q. Have you tried to work since the accident?

A. No.

Q. You haven't tried to work?

A. No, I haven't tried to work.

Q. You haven't looked for any job? A. No.

Q. Do you feel that you are able to work?

A. No.

Q. How heavy was that block that you lifted on the Mission San Gabriel, you said?

A. I was just given an estimate of 35 pounds, approximately 35 pounds.

Q. You had no trouble lifting that block?

A. Yes, I did have some trouble. It is quite a heavy block.

Q. I mean you weren't unable to lift it?

A. Oh, I could lift it enough to estimate the weight [117] of it. I wasn't doing calisthenics with it.

Q. In Honolulu you were paid maintenance, were you not?

A. Yes.

Mr. Toner: May I have Exhibits F and G?

Mr. Fall: Counsel, we can stipulate that he was paid \$2 a day there for the period indicated on those receipts.

Mr. Toner: Yes. I will offer these.

Mr. Fall: I have no objection.

So that it will clear Mr. Johnson's mind with reference to that time, you might tell him what they indicate or what they show.

(Testimony of Robert C. Johnson)

The Court: The receipt for sustenance or maintenance paid to the libelant for the period July 5, 1944 to July 15, 1944 inclusive will be marked Respondent's exhibit next in order. Will that be E?

Mr. Toner: Yes, that will be Exhibit E.

If the Court please, it might simplify matters to have them clipped together and then we can use them as a unit. It covers the period from the 5th of July to the 22nd inclusive. They are continuous.

The Court: The two receipts then may go in as one exhibit, and the second of the two covers the payment of maintenance for the period July 16, 1944 to July 22, 1944 inclusive. [118]

(The document referred to was received in evidence and marked Respondents' Exhibit E.)

Mr. Toner: That is a period of 18 days, and the total amount is \$36.

May I have Exhibit No. H, please?

Do you have any objection to that? That is the repatriation bonus computation.

Mr. Fall: No, I have no objection to that.

Mr. Toner: If the Court please, I should like to offer this computation of the repatriation bonus.

The Court: This computation of repatriation bonus paid to libelant will be marked Respondents' Exhibit F.

(The document referred to was received in evidence and marked Respondents' Exhibit F.)

Mr. Toner: Exhibit D, if the Court please, is a statement of wages.

(Testimony of Robert C. Johnson)

The Court: Yes, I have it.

By Mr. Toner:

Q. I show you a photostatic copy of the shipping articles and ask you if this is a copy of your signature opposite Item 11.

A. (Examining signature) Yes.

Q. That is a copy— A. That is mine.

Q. That is your signature? [119]

A. Yes.

Mr. Fall: We stipulated that that is a photostatic copy of the original shipping articles.

Mr. Toner: I offer the photostatic copy of the shipping articles in evidence as Respondents' Exhibit G.

Mr. Fall: No objection.

The Court: So marked.

(The document referred to was received in evidence and marked Respondents' Exhibit G.)

By Mr. Toner:

Q. Now, Mr. Johnson, I notice that you have been walking around rather slowly today and yesterday. Did you walk around slowly that way when you were in Mr. Black's office?

A. I don't recall whether I did now or not.

Q. Did you wear the glasses that you are wearing now when you were in Mr. Black's offices?

A. I didn't have these glasses at that time.

Q. Did you wear any glasses at that time?

A. I don't recall that either.

(Testimony of Robert C. Johnson)

Q. You testified yesterday that you first saw Mr. Fall after your stay in the Pacific Palisades.

A. After, yes.

Q. You left the Pacific Palisades on October 1st?

A. Yes.

Q. Do you know that Mr. Fall wrote a letter on your [120] behalf on September 19th? A. No.

Mr. Toner: That is all.

Redirect Examination.

By Mr. Fall:

Q. Did your father tell you that he had contacted me prior to October 1st? A. No.

Q. You had some conversation relative to your father contacting some attorney though? A. Oh, yes.

Q. And to do certain things for you?

A. I beg your pardon?

Q. And was to do certain things for you?

A. I don't quite understand you.

Q. I don't think that makes any difference anyway.

Mr. Johnson, I will show you what purports to be a receipt from the Central Pharmacy in Sabinal, Texas, dated 10/13/44. Did you pay that bill? A. Yes.

Q. What was that paid for? A. For medicine.

Mr. Toner: I beg your pardon. What was the answer?

The Witness: For medicine.

Mr. Toner: For medicine? [121]

The Witness: Yes.

Mr. Fall: We offer this receipted bill as Libelant's exhibit next in order.

(Testimony of Robert C. Johnson)

Q. Did you have other payments for medicines too or not?

A. I had other payments but I just paid them out of my own pocket.

Q. Did they amount, or do you recall what they amounted to? A. No, I do not recall.

Q. And that medicine was for what?

A. For headaches.

Q. I notice that there are prescription numbers on that. Did you go to somebody to get a prescription?

A. Yes, there was a physician there.

Q. In Sabinal? A. Yes.

Q. Did you pay him anything for his fees?

A. Yes.

Q. Do you recall how much that was?

A. \$2 I think.

Q. Did you go to him more than once or just once?

A. I went to him several times.

Q. Did you pay him for each call? A. Yes.

[122]

Q. About how much do you think you paid the doctor there? A. I have no idea how much I paid him.

The Clerk: This last will be Libelant's Exhibit 23, your Honor.

(The document referred to was received in evidence and marked Libelant's Exhibit No. 23.)

By Mr. Fall:

Q. Do you recall his name? A. E. A. Woods.

Mr. Fall: I have no further questions.

Mr. Toner: That is all.

Mr. Fall: You may step down.

(Testimony of Robert C. Johnson)

The Court: May I ask you to just resume your seat.

I am looking at Respondents' Exhibit D in evidence, which purports to be an account of your wages, and bonus pay for the period March 25, 1944, to July 1, 1944. Will you look at that and will you tell us how much money was paid to you after you left the ship Mission Soledad.

The Witness: You mean the total amount here, your Honor?

The Court: I don't know the meaning of the figures there and therefore I am asking you how much were you paid on account of wages and bonus after you were discharged from the ship the Mission Soledad. [123]

The Witness: I was paid \$462.30.

The Court: Do you recall when you received that money?

The Witness: Yes, after I was discharged from the hospital.

The Court: On July 5 or 6 of 1944?

The Witness: Approximately.

The Court: Was that amount paid to you in the form of currency or check or how?

The Witness: It was paid in currency.

The Court: When you arrived in San Francisco on July 31, 1944, approximately how much of that amount did you have left?

The Witness: I don't recall.

The Court: You mean you have no idea whether you had one penny or one dollar or what?

The Witness: I knew I had several hundred dollars, but I don't know how much.

(Testimony of Robert C. Johnson)

The Court: Well, now, I believe you told us that although you received maintenance at the rate of \$2 a day while in Honolulu and out of the hospital, that it cost you about \$3.50 a day?

The Witness: Yes.

The Court: Now in addition to paying \$1.50 a day above what you were allowed as maintenance, do you recall paying out any other substantial sum prior to your arrival in San [124] Francisco?

The Witness: No, I don't recall paying out any more substantial sums.

The Court: Then having received \$462.30 on July 5 or 6, 1944, and having received maintenance in the total amount of \$36, and paid out an extra \$1.50 a day for 18 days, which extra amount would total about \$27 for those 18 days, would you say that when you arrived in San Francisco you had approximately \$400 on your person?

The Witness: Approximately.

The Court: How long did you remain in San Francisco?

The Witness: I arrived on Sunday and went to the company the next day and I left that evening; two days.

Mr. Toner: I am sorry, I didn't hear that.

The Court: Read the answer.

(The answer referred to was read by the reporter, as set forth above.)

The Court: While in San Francisco on July 30 and July 31, 1944, did you spend any money for items other than living expenses?

The Witness: No. Just the living expenses in the hotel. That is all.

The Court: That is all the questions I have.

(Testimony of Robert C. Johnson)

Mr. Toner: Is the court finished?

The Court: Yes. [125]

Mr. Toner: I have one other question to ask.

Recross Examination.

By Mr. Toner:

Q. You testified that you were in the Merchant Marine for two years, is that right?

A. Approximately, yes.

Q. During that time did you have any conversations with any of your shipmates who had had injuries and had made settlements with the ship?

A. I don't recall that I have.

Q. Did you know of anyone that had had an injury and had made a settlement with the ship?

A. No.

Q. Had you heard of anyone who had?

A. I had heard of a case of a fellow who contracted tuberculosis and was in the Marine Hospital, but that is far as I knew about it.

Q. Do you know what "signing clear" is, a seaman's expression? A. Signing clear?

Q. Yes. A. I don't recall it.

Q. What do you think it means?

A. Signing clear?

Q. In making a settlement, signing clear. [126]

A. I don't have any idea what it would mean.

Mr. Toner: That is all.

Mr. Fall: I have no further questions. Will you step down.

The Court: You may step down.

(Witness excused.)

Mr. Toner: If the court please, perhaps a short word of explanation is in order on this Exhibit D.

There is a figure in the upper section of \$747.45, and below that are a number of credits for advancements that have been made during the trip, and then there is a deduction for income tax and then there is a deduction labeled by the more or less indelicate term of "slops." That is the seaman's name for the store aboard ship that sells candy and cigarettes and jackets and that type of thing. Those are charged to the seaman's account and are charged on this statement. On this particular statement there is an item of \$19.69 for that purpose.

I thought I would explain that.

The Court: It is my understanding from the testimony of the libelant that there is no question raised about the accuracy of the accounting set forth in Exhibit D.

Mr. Toner: That is right.

The Court: So my inquiry was not directed to any such items as those you have referred to. I was interested to [127] know whether this man was left penniless in San Francisco, but apparently he was not.

Mr. Fall: Mr. Clarence Johnson, please.

CLARENCE JOHNSON,

called as a witness by and in behalf of the libelant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Mr. Clarence Johnson.

Direct Examination.

By Mr. Fall:

Q. Mr. Johnson, you are the brother of Mr. Johnson who is sitting here by my side, the libelant in this action?

A. That is right.

(Testimony of Clarence Johnson)

Q. Now, did you have an occasion to visit him on leave in Texas at Sabinal, Texas, in the fall of last year?

A. I had an emergency furlough about the last part of October.

Q. When you were there did you witness any of these occasions where he would have apparently no knowledge of what he was doing or recognizing people?

A. I did.

Q. Will you tell us, was there more than once that you witnessed that?

A. Just one major one.

Q. On that occasion what happened? [128]

A. I was instructed when I got there that my brother was in very poor condition and that he did go on these frequent spells where he had very little memory of anything, and he was dangerous around there, he could get lost, and for me to keep an eye on him. Therefore I followed him around like a little dog. I never let him out of my sight.

There came an occasion where I had an occasion to leave for approximately 15 minutes, and in that time his energy, I don't know what else—built up until he couldn't stand to stay down or sit down or stay around the house, and he got up and walked around to walk this energy off. He started walking while I was gone, and the 15 minutes that I was gone, when I got back he was not lying down.

So I began to look around the house, and another 15 minutes elapsed and he was nowhere in the vicinity. So we got together about six ranch hands and everybody that was on the ranch, and we started a search. I started on horseback one way. I went just the opposite way from where they found him.

(Testimony of Clarence Johnson)

Approximately an hour later we found him, he was about a mile from camp and standing on the edge of a bluff overlooking the river. My mother and my aunt found him.

Q. Did you come up then?

A. Then I heard three shots, which was the signal that he was found, and I rode up there on horseback about half a [129] mile from the ranch house and I encountered them walking very slowly.

Q. Did you talk to him?

A. I went up and talked to him and asked him what was the matter.

Q. Did he answer you?

A. He had a blank look on his face like a lot of shell-shocked men I have seen in the Pacific.

Mr. Toner: If the court please, I might object to the hearsay and the opinion evidence that is going in and ask that all of the hearsay and all of the opinion evidence be stricken.

The Court: Of course to the extent that the witness has described his observations, the evidence is admissible.

Mr. Toner: Yes, certainly.

The Court: That portion thereof where the witness undertakes to, in effect, give us a diagnosis and express an opinion obviously is inadmissible and we can attach no weight thereto.

By Mr. Fall:

Q. When you talked with him he didn't answer you?

A. No, he didn't answer me.

Q. And his expression was that similar to shell-shocked victims?

A. That is right. [130]

(Testimony of Clarence Johnson)

The Court: That is a pure matter of opinion and that answer is stricken out.

Mr. Fall: I will lay a foundation.

Q. Have you seen many shell-shocked victims?

A. I have seen at least six cases in the Pacific.

Q. Would those individuals know you?

A. They would walk along in the same shuffle and when you speak to them no sign of recognition on their face.

Mr. Toner: If the court please, I should like to object to this whole line of questioning about shell-shocked individuals in the Pacific. I think the court is perfectly able to determine that matter by itself.

The Court: It would hardly seem to me that this witness is qualified to express an opinion comparing the libelant's condition with that of people who are suffering from shell shock. So far he has disclosed nothing to indicate a basis for expressing any such opinion. In other words, it is one thing to say that he has seen a half dozen people known to be sufferers from shell shock, but to be able to say that the libelant's condition is comparable to that is delving into the realm of psychiatry.

Mr. Fall: I agree with your Honor in that. It was merely comparing appearances, not a diagnosis of the condition. That is the only purpose for that question, or that line of questioning. It was not for his diagnosis or an attempt to [131] diagnose it.

The Court: I must observe that I can attach no weight to this line of opinion testimony.

Mr. Fall: All right. I will proceed on the other matters that he knows of.

(Testimony of Clarence Johnson)

Q. How long did this condition that you saw your brother in when he was being led back on this occasion that you have told us about, how long did that condition last?

A. Well, after we got him back to the ranch house.

Q. How long did it take to get back there?

A. I would say about a half an hour's walk, very slowly.

Q. How long after he got back to the ranch house did he apparently know you or how long before?

A. Well, after they got back to the ranch house he had these pills which relieved these terrible headaches and they gave him a few of these and had him lay down and either he rested or he went to sleep, and approximately an hour or so later he seemed back in his normal condition.

Q. Did you know of your own knowledge about how frequently those spells occurred?

A. Only when I got down to the ranch they told me he had been having these—

Mr. Toner: Just a minute. [132]

By Mr. Fall:

Q. You didn't know previous to that of your own knowledge? A. No.

Q. Now when you were there how often did you notice these spells?

A. The one major one that one time was the major one. Other times I was there in time to lead him back to the bed and make him lie down.

(Testimony of Clarence Johnson)

Q. How often would that happen?

A. I think that happened about twice on other times when I was there.

Q. That is, he would get up from his bed? Would he know you?

A. No, he would just begin to walk off and I would say, "Where are you going?" and he would just keep on going so I would follow him until he started out of the major yard where we had a fence around it and then I would get him by the arm and take him back and lay him down.

Mr. Fall: You may cross examine.

The Court: I didn't hear you say how far was this place where your brother was found, how far away from the ranch house.

The Witness: I would say it was about three-quarters of a mile to a mile. [133]

Mr. Fall: If I may ask another question, your Honor?

Q. Have you been present recently during any occasions where he has had nervous upsets?

A. I have.

Q. And the latest one was when?

A. The latest one was as we were leaving your office starting back to Los Angeles, a car run out in front of us and I had occasion to slam on the brakes fairly hard, and he became very excited then and almost out of control.

Q. And almost what?

A. Almost out of control.

(Testimony of Clarence Johnson)

Q. What did he do?

A. He jumped up and he kind of half stood up in the car and he yelled at me to slow down. When I said to "sit down, take it easy," he was trembling all over.

Mr. Fall: I have no further questions.

Cross-Examination.

By Mr. Toner:

Q. How long were you and your brother at Sabinal?

A. I had a 10-day emergency furlough and about 10 days extension; about 20 days. It was all the time that I was with him.

Q. You stayed with him fairly constantly?

A. I stayed with him all the time.

Q. The idea was that you wanted him to recuperate?

[134] A. That is right.

Q. You went walking with him?

A. I walked with him everywhere he went.

Q. Did you go riding together?

A. He didn't ride horseback, they wouldn't even let him on the tamest horse down there.

Q. Have you seen your brother driving a car?

A. Yes, I have.

Q. How long ago?

A. About three weeks ago, as he said.

Q. That was in San Diego?

A. That was in San Diego.

Mr. Toner: That is all.

Mr. Fall: That is all.

(Witness excused.)

Mr. Fall: Mr. George Johnson.

GEORGE JOHNSON,

called as a witness by and in behalf of the libelant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: George Johnson.

Direct Examination.

By Mr. Fall:

Q. Mr. Johnson, you are the father of Robert Johnson? A. I am. [135]

Q. Have you been present since he was injured during any of these occasions where he would apparently not know what was going on around him or not recognize people? A. I have.

Q. About how often of your own knowledge would these spells come on, from the shortest time to the least frequent?

A. Well, the first time was just an absolute loss of remembering anything about the incident.

Q. I mean times that you know of.

A. Well, the first time was over at the rest home at Santa Monica. I was living in Los Angeles and I would go out and see him each day, and they have a very nice place out there—I am sure the court is acquainted with the setup—and they take the boy down to the beach.

Q. Tell what occurred on this particular occasion.

A. All right.

I was keeping him supplied with money to make the trips, and on the day previous, two days previous, I had given him a 5-dollar bill and the next day I was out and I said, "How is your money holding out?"

(Testimony of George Johnson)

He opened up his pocket-book and said, "I have \$3 left."

I visited him the following day and asked him how his money was holding out. He opened his pocket-book and had no money at all. I said, "Did you go some place yesterday?"

He said, "No." [136]

I said, "Where is the \$3?"

He said, "I don't know." He turned his pocket-book inside out and there was no money. He started to get nervous and I said, "Skip it," and I gave him some more money.

That was the first instance.

Q. Were you present at times when he didn't recognize you? A. Yes.

Q. When was that?

A. Well, the first time was—let me get the time straight—he was back from the Santa Monica rest home and we were living at San Diego, and I was reading, his mother was doing the house chores, and I looked around and he was gone.

I said, "Where is Robert?"

She said, "He was here just a minute ago."

So I looked out the window and there he was walking around the building, a large building across the street. The street light was on the corner and he was just going in a slow, shuffling gait around the building. I counted him making this trip three or four times.

Q. Did you go over there?

A. I did. I said, "How about me walking along with you?" and he never said a word.

(Testimony of George Johnson)

Q. Did he do anything at all that would give you the [137] impression that he recognized you?

A. No, he never said a word, never made any overtures or grinned or any recognition that would indicate that he knew who I was or that he even heard me.

Q. Did you then take him home?

A. I walked him a time or two around the building and took him home; shaking his arm, got him into the house, kept on talking to him, and in a short time, it wasn't very long, I would say 10 minutes, I was able to get him to answer questions.

Q. Did that occur as often as three times in a day?

A. No.

Q. Not that you know of? A. No, sir.

Q. How often did these spells occur that you personally know of?

A. Well, I just knew of three, and they were spaced apart several months. The last one has been around six or eight weeks. I was working swing shift.

Q. You weren't home all the time?

A. No, I was working the swing shift.

Q. But the ones you are telling us about now are the ones you personally know of? A. Yes.

Q. Now after he got out of the rest home in Santa [138] Monica, what was the nature of his gait?

A. Well, it is kind of awkward, kind of a shuffle, a gait from side to side.

Q. Was it a broad gait?

A. His legs are spaced wide apart and it is a slow movement and it looked like a person trying to balance himself or keep from falling or something like that. I don't know how to explain it.

(Testimony of George Johnson)

Q. When he would walk around the house, would he walk straight along?

A. No, he would touch the wall here, maybe a chair over there; he seemed like he needed something to guide him or control him or reassure him or something.

Mr. Fall: You may cross examine.

Cross-Examination.

By Mr. Toner:

Q. You testified, Mr. Johnson, that the rest home at Santa Monica was a very fine place, did you not?

A. That is right.

Q. You didn't have any difficulty in seeing them out there? A. No.

Q. Your son didn't have any difficulty?

A. I never heard of any; no, sir.

Q. I notice in their report the statement, "Father in [139] his anxiety was apt to be very critical and express the wish to collect greater damages."

Mr. Fall: Just a minute. To which I object and ask that that part be stricken. Although it was offered by the libelant, I believe in the medical report, that part is particularly hearsay and a conclusion of whoever incorporated that in the record.

Mr. Toner: If the court please, the materiality of this point that I am making is that it is perhaps unnecessary, I appreciate that the father would certainly be prejudiced in favor of his boy, but I am just attempting to show how this man's mind works in this particular type of case.

The Court: Perhaps the question as phrased is open to criticism that counsel has offered.

Mr. Toner: I will withdraw the question.

(Testimony of George Johnson)

The Court: I think you may inquire in another way, however.

Mr. Toner: I will withdraw the question.

That is all.

Mr. Fall: That is all.

The Court: Step down.

(Witness excused.)

Mr. Fall: At this time the libelant offers in evidence Respondents' Exhibit K for identification as libelant's exhibit next in order. [140]

Mr. Toner: We have no objection, if the court please.

Mr. Fall: I guess that will be Libelant's Exhibit 23.

The Clerk: No. 24 is the next exhibit number. No. 23 is this little receipt.

(The document referred to was marked Libelant's Exhibit No. 24 for identification.)

Mr. Toner: What are Libelant's Exhibits 22 and 23?

Mr. Fall: No. 22 is the War Shipping Administration Regulation No. 108; No. 23 is the \$1.50 receipt from the drugstore.

The Court: This document entitled "Estimated Wage Account" of the libelant will be marked Libelant's Exhibit 24.

The Clerk: Yes, your Honor.

Mr. Fall: The libelant rests, your Honor.

Mr. Toner: If the court please, our defense will be the testimony of Mr. Frick. I presume that will take a good share of the afternoon. I am perfectly willing to start with Mr. Frick at this time and run until noon.

The Court: How long do you think your direct examination will take?

Mr. Toner: I should think probably—well, I was going to say about less than a half hour. Possibly we can finish it by 12:00.

The Court: Let's see what progress we make. [141]

* * *

Mr. Toner: I will call Mr. R. L. Frick.

R. L. FRICK,

called as a witness in behalf of the respondents, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: R. L. Frick.

The Clerk: F-r-i-c-k?

The Witness: Yes.

Direct Examination.

By Mr. Toner:

Q. Where do you live, Mr. Frick?

A. 2745 Shasta Road, Berkeley, California.

Q. By whom are you employed?

A. Mr. John H. Black.

Q. Are you an attorney? A. I am.

Q. How long have you been an attorney?

A. Since 1916—pardon me, since 1926, I meant to say.

Q. What is Mr. John Black's relationship to the War Shipping Administration?

A. Well, he represents the underwriters for the War Shipping Administration.

(Testimony of R. L. Frick)

Q. And in such capacity your office came in contact [142] with the libelant in this case?

A. That is correct.

Q. Are you the gentleman to whom the libelant was referring when he said he spoke to a gentleman in Mr. Black's office?

A. I am.

Q. State what you know about your conversation with the libelant.

A. Well, he came to my office and told me that he had come in to discuss his claim, and we did discuss it. I interviewed him, got his version of the incident, and dictated the statement, which he signed. Thereafter a release was prepared, which he also signed.

Q. Did the libelant seem to look the same as he does now, I mean physically?

A. He didn't walk around, move about, the way he has been doing here the last couple of days.

Q. Was he wearing these large green glasses?

A. No.

Q. Did he give a normal appearance?

A. Perfectly normal.

Q. Did he talk normally?

A. Perfectly normally.

Q. Did he seem to be intelligent?

A. He seemed to be quite intelligent. [143]

Q. Did he know what he was doing.

A. I have no doubt about it.

Q. Did he seem to know what he was doing?

A. Yes.

Q. Did he discuss his claim rationally?

A. He did.

(Testimony of R. L. Frick)

Mr. Fall: I think that answer is a conclusion of the witness, your Honor.

The Court: It certainly is. It is not helping the court any.

Mr. Toner: I am sorry.

Mr. Fall: We are entitled to know the facts, not his conclusions.

By Mr. Toner:

Q. Did he appear to be confused about the facts of the accident?

Mr. Fall: Again that would be asking for a conclusion of the witness.

The Court: It does. Why don't you ask this witness, who is an intelligent man with considerable experience in the law, to just relate in his own words what took place?

Mr. Toner: All right.

Q. Now, to the best of your recollection, what was the libelant's story of what happened aboard ship?

A. Well, he told me— [144]

The Court: May I interrupt to suggest this: That question of course breaks in, as it were, at the middle of the interview. I wonder if we couldn't get Mr. Frick to relate what was said and what was done from the time libelant entered his office until he left. In other words; give us a word picture of what someone who happened to be listening in would have heard and would have observed. Then let us draw the conclusions.

Mr. Toner: Very well.

Q. Where were you when you first saw libelant?

A. In my office.

Q. Did he come into your office?

A. He did.

(Testimony of R. L. Frick)

Q. What did he say?

A. As I stated before—I don't remember the exact words—but he told me he had come in for the purpose of discussing his claim against this vessel.

Q. Did he ask about his wages?

A. Yes. I don't know whether he asked specifically about his wages, but we discussed all phases of the claim.

Mr. Fall: I ask that that be stricken as calling for a conclusion of the witness.

The Court: The last sentence will go out.

Mr. Fall: We are entitled to have the conversation, the witness' conversation and the conversation of Mr. John—[145] son.

By Mr. Toner:

Q. What did Mr. Johnson say about his claim? How did he open the conversation?

A. I am not going to attempt, after 15 months, to give anything approximating a verbatim conversation between us. I do know exactly what took place. I know what we talked about and what was finally done. I know that because the file came before me at regular periods beginning only a few months after.

As I say, he came in to discuss his claim with me, told me what had happened to him, or at least he didn't purport to know of his own knowledge what did happen to him. He had been told afterwards that he had been struck on the head by a block.

I explained to him what I understood the situation to be with respect to wages, that he was entitled to his unearned wages from the time he left the vessel until he returned to the United States, or to the termination of the

(Testimony of R. L. Frick)

voyage, whichever occurred first, subject to the qualification that he was still disabled upon his return and the vessel was still out, that he would be entitled to continuing wages not to exceed the full period of the voyage; and that he was not entitled to any maintenance because he had already admitted he was fully recovered, and had just arrived. [146]

I then asked him what he thought we should do for him, what amount of money we should give him, and he said he thought he should have \$150 for his injury.

Q. Did he use those specific words, "for his injury?"

A. Yes, "for his injury," very definitely.

Q. Was it understood that that was to be in addition to the amount—

Mr. Fall: Let's not have what he understood; let's have what he said.

The Court: Yes, I think that question is open to criticism.

By Mr. Toner:

Q. Did you tell the libelant that the \$150 was to be in addition to the amount that he was to be paid for wages?

Mr. Fall: Just a minute. To which I object as leading and suggestive.

The Court: Objection sustained. Let the answer go out.

By Mr. Toner:

Q. What did you tell the libelant about the \$150?

A. As I say, I asked him what he was asking for in settlement of his claim, in full settlement, and he told me that he thought that I should pay him \$150 in addition

(Testimony of R. L. Frick)

to the unearned wages for his injury. He said, "I should get something for my injury," and we agreed on that, that we would settle his claim for the unearned wages plus \$150 for his [147] injury.

Q. Was there any claim made by the libelant for bonus that was earned on the ship? You heard libelant testify this morning. A. Yes.

Q. Was there any claim made by the libelant in your presence that he was entitled to the bonus as earned on board the vessel after he left it?

Mr. Fall: Just a minute. For clarification of that, when you use the word "claim" do you mean did he ask for the amount? I think "claim" is ambiguous and for that reason the question is a bit ambiguous. What constitutes a claim?

Mr. Toner: I think that is perfectly plain, if the court please. If a man comes to Mr. Black's office, or the witness' office here, and claims certain things—he said he claimed it this morning.

Mr. Fall: We are entitled to have the conversation.

By Mr. Toner:

Q. Did the libelant ask you for any payment on account of bonus earned by the ship after he left it?

A. He did not. I can explain if I am permitted to what I said in regard to bonus, if that is what you want in the way of conversation.

The Court: Yes. You have been asked to relate the conversation and I think you might as well go ahead. [148]

The Witness: I can't relate it of course word for word.

(Testimony of R. L. Frick)

The Court: The substance.

The Witness: In substance I did explain to Mr. Johnson that he was not entitled to any bonus after he left the vessel because that bonus was based upon a hazard, that is the principal theory, but that he would principally receive repatriation bonus on the vessel that he came back on, the *Philippa*. I remember that. That was discussed.

By Mr. Toner:

Q. I show you Libelant's Exhibit B and ask you if that is the release that was prepared for signature by the libelant.

A. Yes, it is.

The Clerk: That wouldn't be Libelant's Exhibit B.

Mr. Toner: Excuse me. Respondent's Exhibit B.

Q. I show you Respondent's Exhibit C and ask you if that check was delivered in your office.

A. It was not.

Q. The check is a check of the Pacific Tankers.

A. Yes.

Q. The normal practice is for you to issue a voucher?

A. No.

Mr. Fall: Just a minute. To which we object. We are not interested in the normal practice, we want to know what was done on this occasion. It is incompetent, irrelevant and [149] immaterial what the normal practice was.

Mr. Toner: The next question would be that on this particular occasion the usual practice was followed.

Mr. Fall: Wouldn't it be so much simpler to ask him what was done?

The Court: I am inclined to think that there is merit in this criticism. It is important in this case to know

(Testimony of R. L. Frick)

what transpired, not what ordinarily transpired when somebody else is around.

By Mr. Toner:

Q. Did you direct libelant to go to the office of the Pacific Tankers for the purpose of picking up a check in the amount of \$247.10?

A. My secretary probably did. I can explain the mechanics of the release, if that is what the court wishes.

The Court: The court doesn't wish anything. The court is interposing no objection.

We will take the recess until 2:00 o'clock.

(Whereupon, at 11:55 o'clock a. m. a recess was taken until 2:00 o'clock p. m.) [150]

Los Angeles, California; November 14, 1945; 2:05 O'Clock P. M.

Mr. Toner: Will you resume the stand, Mr. Frick?

R. L. FRICK,

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Direct Examination (Continued).

By Mr. Toner:

Q. Mr. Frick, you testified this morning that you had a conversation with Mr. Johnson in your office on July 31, 1944. A. That is correct.

Q. Will you describe in your own words that conversation with Mr. Johnson?

A. Well, he came into the office and told me that he had been injured on the Mission Soledad and told me

(Testimony of R. L. Frick)

how he was injured, by a block falling and striking him on the head. He had been, or at least he had been told afterwards (he didn't remember it himself) that he had been hospitalized at Queen's Hospital, I believe it was, in Honolulu for a certain length of time, had come back on the *Philippa*, had just arrived the day before, that he had come in to discuss his claim.

I then dictated a statement, based upon the information he had given me, which he signed, and then we discussed the [151] settlement of the claim.

I explained to him what I understood to be the unearned wages to which he was entitled; there was no maintenance due because he admitted he was fully recovered, as indicated in his written statement, and there was nothing to indicate to me anything but that he was fully recovered.

Mr. Fall: I ask that the last answer be stricken.

The Court: The statement "nothing to indicate to the contrary" should go out.

In other words, the question merely calls for a recital of the substance of what took place between Mr. Johnson and yourself.

The Witness: I then asked him what he was asking by way of settlement of his claim, and he said, in addition to the wages which I just referred to, that he thought he should be paid, or receive, \$150 for the injury itself. And the settlement was predicated upon that basis.

Mr. Fall: I ask that "the settlement was predicated on that basis" be stricken as a conclusion of the witness.

The Court: That will go out.

The Witness: You wish me to proceed with what transpired from that time on?

(Testimony of R. L. Frick)

Mr. Toner: That is right.

The Witness: I then had a release prepared, which was given to Mr. Johnson. He read it, or at least it was given to [152] him, he looked at it, and he executed the release.

I told him before he signed it that it was a full release of all claims of every kind in connection with this accident. I used the exact expression, because I thought that that would be more apt to be certainly understood by a merchant seaman, that he was signing clear.

Mr. Fall: I ask that the statement "I thought that that would be" be stricken as a conclusion of this witness, from that point on.

The Court: Yes, that statement will go out.

The Witness: I told him in signing this release he was signing clear, that he was making a full settlement of the claim, and that meant—I explained to him that that meant a full settlement of everything.

By Mr. Toner:

Q. Did you use those words "signing clear?"

A. I used that exact expression, "signing clear."

Q. Did you use those words "settles everything?"

A. "Settles everything," and I either used the word "full" or "complete," that it is a full or complete. I am not sure which.

Q. Full or complete what?

A. Settlement of all claims.

I also explained to him that it would be a settlement of any claim for wages of any kind. [153]

Mr. Fall: I ask that that be stricken as a conclusion of the witness, "I also explained to him that." We are

(Testimony of R. L. Frick)

entitled to know what was said. If that was his statement I have no objection to it.

By Mr. Toner:

Q. For the record, will you state whether or not you stated that the settlement included various things?

A. Yes, I did.

Q. What did you tell Mr. Johnson?

A. I stated the settlement included the settlement of all claims of every kind, including wages, maintenance, if any, compensation, if any, and damages or any other kind of payment of money.

Q. You heard Mr. Johnson testify this morning that this \$150 was a claim for bonus that was earned on the ship?

A. I did.

Q. Is that correct or incorrect?

A. Incorrect.

Q. You are sure about that?

A. Positively sure about that.

Q. What was the \$150 payment for?

A. The \$150 payment was for the payment of damages for the injury itself.

Q. Did Mr. Johnson use the words "for the injury itself?" [154]

A. Yes, he said "for the injury itself."

Q. He used those identical words, "for the injury itself?"

A. Yes, I am sure of that. He said he thought he should be paid or receive \$150 for the injury itself.

Q. What did Mr. Johnson say with reference to his recovery?

A. He said he was fully recovered.

Q. Did he use those words?

A. Either fully or completely or entirely, but he said he was fully recovered or completely or entirely recovered.

(Testimony of R. L. Frick)

Q. Did he complain about headaches?

A. He did not.

Q. Did he complain about dizziness?

A. He did not.

Q. Did he give any indication of being in any condition other than normal to you? A. He did not.

Q. Did he read the statement that was prepared before he signed it?

A. It was handed to him and he apparently read it. He held it in his hand and looked at it for a short time. I assume he read it. He was given a full opportunity to.

Q. Did he express himself?

A. He acknowledged the fact that he had read it. [155]

Q. Did he say that it was correct? A. He did.

Q. Did he read the release?

A. The same answer would apply there: He was given the release, it was handed to him for the purpose of reading it, and he acknowledged that he had read it and understood it.

Q. You heard Mr. Johnson testify that he was told that if he didn't sign some paper in your office he wouldn't get any money? A. Yes, I heard that.

Q. Or that he wouldn't get his wages?

A. Yes.

Q. Did he talk to anybody besides you in your office prior to making this settlement, or during the course of making this settlement? A. No.

Q. Did you tell him that he would be unable to get his wages until he signed any paper?

A. I did not.

(Testimony of R. L. Frick)

Q. Did anybody else in your office tell him that?

A. Not in my presence.

Q. I show you Respondent's Exhibit A, which is the statement that Johnson signed in your office. Is that correct? [156]

A. Yes, that is the statement.

Q. I notice that the statement is rather short. Do you have any explanation for the brevity of the statement.

A. Yes. There was nothing, as I said, to indicate to me that the man was anything other than fully recovered from any injury he might have suffered, and in view of the fact that I understood him to be fully recovered—he so admitted, both orally and in his written statement—it didn't seem to me at that time that it required a great deal of detailed recital in the statement or any great deal time to be spent on it.

I might say, if I may, that if there had been the slightest indication to me that he either was disabled or claimed to be I would have had him examined by a doctor.

Mr. Fall: I ask that that statement be stricken as a voluntary statement of the witness.

The Court: It may go out.

By Mr. Toner:

Q. Did you have him examined by a doctor?

A. I did not.

Q. Why did you not have him examined by a doctor?

A. Because there appeared to be no occasion for it, no reason for it.

Mr. Fall: I ask that that be stricken as a self-serving statement. [157]

The Court: By that answer do you mean that because of Mr. Johnson's statement to you to the effect that he

(Testimony of R. L. Frick)

had fully recovered and from his appearance, you concluded there was no necessity for referring him to a doctor?

The Witness: That is correct, your Honor.

The Court: Let the answer stand.

Mr. Toner: That is all.

Cross-Examination.

By Mr. Fall:

Q. At the time Mr. Johnson was in your office, you had before you a report of the accident, didn't you?

A. I believe I did; yes.

Q. Did you tell him at that time that he had a cause of action against the operators of the boat?

A. I don't believe I did.

Q. As a matter of fact, you didn't, did you?

A. No.

Mr. Toner: If the court please, I think the answer to the question is based on an incorrect statement of the law. He says, "against the operators of the boat." This is an action against the United States.

Mr. Fall: They were the owners and operators of the boat. We have conceded that the Pacific Tankers were not the operators of the boat but the general agents for the ship's business. [158]

Q. Did you explain to him his rights as to maintenance?

A. Yes. As I testified this morning, I explained to him his rights as to unearned wages and maintenance if he was entitled to any.

(Testimony of R. L. Frick)

Q. What did you tell him as to the amount to which he was entitled when he was in Honolulu?

A. You mean after he left the hospital?

Q. After he left the hospital and up to the date that he left on the *Philippa*?

A. That wasn't discussed for the reason that he told me—and it is so recited in the statement—that his expenses had all been paid there by the company's agent.

Q. Didn't you have presented to you in your office a copy of the clinical abstract from the United States Public Health Service in Honolulu at the time Mr. Johnson came in?

A. I believe I did. I know it is in the file now and I believe it was in the file then.

Q. And you knew, because it was in the statement, that the doctors in Honolulu said that he would be unfit for an indefinite period of time?

A. Yes, I knew that if it was in the abstract.

Q. The exact wording of the clinical abstract is as follows, Mr. Frick—

The Court: Why not show the exhibit to the witness?
[159]

Mr. Fall: Yes. Here is a photostatic copy of the abstract. I can get you the original.

The Witness: I don't recall this one, Mr. Fall. I may have this one too. I was referring to a different abstract entirely.

Mr. Toner: There are two of them, if the court please.

The Witness: I am referring to the other one, if there are only two.

The Court: What have you shown the witness?

(Testimony of R. L. Frick)

Mr. Fall: I showed him a copy of the exhibit in evidence, Libellant's Exhibit 15, the first page thereof.

The Witness: That is the abstract from clinical record. This is, I believe, what I was referring to. (Indicating) This is the one I thought you meant.

Mr. Fall: The one you are looking at now was the early one and I believe the one I showed you was the one I obtained at a later date.

The Witness: In any event, this is the one that I thought you were referring to and is the one that I was referring to in my answer.

Mr. Fall: Yes. That is the second page of Libellant's Exhibit 15 in evidence and the wording on this says: "Not fit for duty for an indefinite period, fit for travel."

Q. Is that correct? A. Yes. [160]

The Court: Let me see if I understand this testimony. Will you let the witness have Exhibit 15 again?

Mr. Fall: Yes, your Honor.

The Court: Do I understand that while Exhibit 15 consists of two pages, it is your recollection that you did not have before you during the San Francisco conference a copy of the first sheet of that exhibit but did have a copy of the second sheet?

The Witness: That is my recollection, your Honor. I don't recall the first sheet at all at that time. I don't think I had it. I don't even independently recall now whether I had the other sheet, but I know I have seen it and I imagine I probably did. But I don't know when that was received. I don't think there is any stamp on it.

(Testimony of R. L. Frick)

By Mr. Fall:

Q. Did you advise Mr. Johnson at this conversation on July 31 of 1944 what would constitute the basis for a cause of action against the ship or its operators?

A. No.

Q. Did you tell him that he was entitled to maintenance in a reasonable sum during any period of time that he was disabled by reason of the injury during which time he was not in the hospital?

Mr. Toner: If the court please, that is not a correct statement of the law, as I understand it. There are many cir- [161] cumstances in which a man is not entitled to maintenance when he is outside of the hospital. For instance, when the libelant was returning for Honolulu to San Francisco he was outside the hospital and it is claimed he was not disabled and no maintenance was paid. When a man is at home and not put to any maintenance, the cases indicate that he is not entitled to any maintenance.

Mr. Fall: I suppose I couldn't ask all those questions in one question so I am giving them one at a time.

The Court: May we have the pending question?

(Question read by the reporter as set forth above.)

The Court: I think the witness should answer that.

The Witness: I did not.

By Mr. Fall:

Q. Did you tell him that he wasn't entitled to maintenance during the period of his repatriation when his maintenance assessments were being paid for on the boat?

A. I didn't catch the question.

(Question read by the reporter as set forth above.)

(Testimony of R. L. Frick)

The Witness: No. As I testified this morning, I believe, on the contrary, I told him that he would be undoubtedly paid a repatriation—pardon me. I was thinking of bonus. I had another thought there—maintenance on the boat on the way home.

Q. Yes. [162]

A. Did I tell him that he would not be entitled to maintenance during that period?

Q. Yes.

A. No, I did not tell him that. I told him nothing about maintenance, for the reason that it wasn't involved apparently.

Q. Admittedly you did owe the man some wages when he returned to San Francisco. That is correct, isn't it?

A. I owed the man?

Q. Or the War Shipping Administration, Pacific Tankers, owed the man wages when he got to San Francisco.

A. Why, yes. It was my understanding that he was entitled to unearned or contractual wages from the time to which he had been paid until he got back to San Francisco in this particular case.

Q. Why did you place that sum in this release as part of the consideration for the release for a claim for damages?

A. I don't know. We always put the full amount paid in the consideration.

Q. That had no relation at all to any claim for damages?

A. I can only give the same answer; we always put the full amount in that is paid.

(Testimony of R. L. Frick)

Q. Just like it is the policy of your office never to pay a man a cent of maintenance as long as he has a claim out- [163] standing for damages? That is so, isn't it?

Mr. Toner: I object to that as highly argumentative.

The Witness: I would like to answer it, if I may.

The Court: I think the objection is well taken.

By Mr. Fall:

Q. Who was it that dictated this typewritten statement on the back of the check under which Mr. Johnson would be required to sign his name if he cashed the check? A. I haven't the least idea.

Q. That is, the check is for the sum set forth in the release, \$247.10, isn't it?

The Court: Isn't that a matter of comparison of the two documents?

Mr. Fall: Probably so, your Honor.

This recites: "In full satisfaction of all claims and demands against the S. S. Mission Soledad for injuries sustained by me on or about the 30th day of June, 1944, as per release of even date."

Q. Now that was paid to him, the \$247.10, for the settlement of his claim for damages, wasn't it?

A. For damages? No.

Q. Well, that statement there is incorrect then?

A. I wouldn't know. I would have to look at it.

(Passing document to witness.)

Q. That statement then is incorrect, isn't it? [164]

A. I don't think I would be prepared to say whether it was incorrect or not, Mr. Fall.

(Testimony of R. L. Frick)

Q. Weren't you the one that prepared and determined the amount that was going to be paid?

A. No, I wouldn't say I determined the amount; I would say that the amount was arrived at by mutual agreement between us, by negotiations. I didn't determine anything. The law determined part of it on the contractual wages.

Q. And it is an interpretation of the law?

A. Yes, I said that this morning; that is my understanding of the law.

Q. Mr. Johnson didn't have anyone to assist him in the interpretation of the law, did he?

Mr. Toner: If the court please, I object to that as an improper question, if it is a question.

The Court: I am inclined to think it is in the nature of an argument. The record is quite clear that this man, the libelant, came into the office of counsel for the underwriters of the ship, nobody was present other than the witness, who is the legal adviser or assistant legal adviser to the underwriters, and the libelant. Now the rest is a matter of argument.

Mr. Fall: I am afraid that you are right—not afraid, but admit that that is a fact. I went a little further than I should have on that. [165]

Q. Were you familiar with any regulations of the War Shipping Administration on the date of the 31st day of July, 1944, which indicated the amount of maintenance to which a man or a seaman was entitled?

A. What date was that, Mr. Fall?

Q. July 31 of 1944.

A. No, I don't think I am familiar with any War Shipping Administration regulation at that time.

(Testimony of R. L. Frick)

Q. Were you familiar with War Shipping Administration Operations Regulation No. 72?

A. I wouldn't recognize it by number if I am familiar with it.

Q. I call your attention to War Shipping Administration Operations Regulation No. 72, a copy of which I have here, under Subdivision 2. Will you read that?

A. (Examining document)

The Court: This is Regulation No. 74?

Mr. Fall: No. 72, your Honor.

The Court: And you are particularly directing the witness' attention to Subdivision 2 thereof?

Mr. Fall: That is correct. It is the paragraph in quotes.

The Witness: You mean both the paragraphs in quotes under Subdivision 2? You want all of this?

Mr. Fall: No, this is the only one in quotes; down to [166] the end of that paragraph.

Q. Were you familiar with that?

Mr. Toner: May I look at this?

Mr. Fall: Counsel, that is a copy you gave me.

The Witness: I have probably read it. I don't recall whether I had it in mind at the time or not.

By Mr. Fall:

Q. Now that you have refreshed your recollection, it is provided that seamen, when they weren't attached to the vessel, unlicensed personnel, would be given \$2.50 a day for their meals and \$2 a day for living quarters or hotel accommodations.

Mr. Toner: If the court please, I should like to object to this because this particular regulation has reference

(Testimony of R. L. Frick)

to a situation in which the personnel have been separated from their ship and are traveling in the United States from one port in the United States to another. I do not think it has any bearing whatsoever on the maintenance or the rate for maintenance at Pearl Harbor or any other place except for the very purpose for which it is intended—within the United States.

Mr. Fall: Again, your Honor, this may be a basis for an inference that the court is entitled to take from this record that the War Shipping Administration has established \$4.50 a day or did establish \$4.50 a day as the rate to be paid a man [167] while he wasn't attached to the ship.

Now certainly an injured man would be entitled to the same amount. It wouldn't make any difference whether he was injured or whether he happened to be traveling from one port to another.

The Court: Let me see the regulation.

Mr. Fall: Yes. We will offer this in evidence, your Honor, as Libellant's exhibit next in order; and it is Respondent's Exhibit N-2 for identification.

The Court: Do I understand the position of Government counsel is that the question as to what effect shall be given to this regulation is a matter of argument? You are not objecting to the introduction in evidence of the regulation itself?

Mr. Toner: I am objecting to the introduction of the regulation in that it is not applicable to maintenance as the question is presented in this case.

Mr. Fall: I think I can clear that up very promptly.

The Court: May I inquire: Is this one of the regulations that was published in the Federal Register?

(Testimony of R. L. Frick)

Mr. Toner: I am not sure about that, if the court please. It could very likely be. If so, the court probably could take judicial notice of it.

The Court: That is my point.

Do you know, Mr. Frick? [168]

The Witness: No, I don't, your Honor.

Mr. Fall: I think I can clear that point up, your Honor. I don't know whether it was printed in the Federal Register, but by this shipping articles that rider is included as a part of the shipping articles. The shipping articles read as follows:

"U. S. A. Trsp. Riders #64 and 72 included in this contract."

I think it is an integral part of the contract and should be in evidence.

Mr. Toner: I agree that it is an integral part of the contract, just as other clauses in the shipping articles are an integral part of the contract, as these shipping articles are. However, the regulation deals with the situation in which a merchant seaman is separated from his vessel at a port other than the port from which he ships.

In other words, in case a man ships from the Port of Los Angeles and his voyage is terminated at New York, there are certain contractual obligations of the ship to return him to the port in case he so desires, and in addition to paying the railroad fare his ship is obligated to pay him in accordance with the terms of the contract.

The Court: In any event then it would seem to come down to this: The document referred to, namely, Regulation 72, is properly admissible in evidence because it

(Testimony of R. L. Frick)

is a part of the [169] shipping articles. What legal effect shall be given to the same is a matter of argument.

Mr. Toner: That is right.

The Court: So we will admit it in evidence. It will become Libellant's exhibit next in order. That will be 25.

Mr. Toner: If the court please, it might be well to attach it right to the shipping articles if we are going to regard them as a unit.

Mr. Fall: I have no objection. The shipping articles are a respondent's exhibit. I just offered them.

Mr. Toner: It doesn't make a great deal of difference.

The Court: Let's attach it then to the shipping articles. That is already in evidence as Respondent's Exhibit G.

(The document referred to was made a part of Respondent's Exhibit G in evidence.)

By Mr. Fall:

Q. Now during the noon hour your recollection as to all of the conversation that took place on August 31st has been quite refreshed, hasn't it?

A. No; it has not.

Mr. Toner: Pardon me. I believe counsel misspoke. He said August 31st; he means July 31st, I believe.

Mr. Fall: July 31, 1944.

Q. In answering that question you knew what I meant even though I didn't say it? [170]

A. I assumed that you were referring to the date in question.

Q. That is the date I was.

(Testimony of R. L. Erick)

In answer to a question this morning you told the court that you didn't remember the conversation that took place, didn't you?

A. No, I don't remember that I told the court that at all. My recollection was that I told the court that I wasn't going to undertake to give a verbatim report of the conversation that took place 15 or 16 months ago.

Q. You said you didn't remember the words, you remembered the topics discussed but you didn't remember what was said, isn't that correct?

A. No, I didn't say that.

Q. Now you have seen this check that was paid Mr. Johnson on July 31 of 1944 in the sum of \$247.10, haven't you?

A. You mean seen it where, in court?

Q. In court here today.

A. Yes, since you showed it to me.

Q. That was the first time you had seen that?

A. Yes.

Mr. Fall: I have no further questions.

Redirect Examination.

By Mr. Toner:

Q. Mr. Frick, Mr. Fall asked you a couple of questions [171] about the abstract from the United States Public Health Service in Honolulu.

A. Yes.

Q. That was the abstract that was dated July 5, was it not?

A. I think that was the date. That is my recollection.

The Court: Exhibit 15?

The Witness: In any event, it is the shorter one of the two. In other words, the contents I believe are more full on the other one, the photostated one.

(Testimony of R. L. Frick)

Q. With reference to recollecting verbatim the conversation, you did not mean to imply this afternoon that you now recollect the conversation verbatim, every word, word for word? A. Of course not.

Mr. Toner: That is all.

The Court: May I inquire, did you make any notes of this conference with Mr. Johnson?

The Witness: Yes, I have two. I made some very brief notes.

The Court: Do you have them here?

The Witness: Do I have them?

The Court: Yes.

The Witness: I haven't them.

The Court: Do you know where they are? [172]

The Witness: Yes, I have two. I have the notes, yes, with me, the original notes.

The Court: Will you step down and get them?

The Witness. (Producing documents as requested.)

Mr. Toner: These are the notes you took yesterday?

The Witness: Yes.

The Court: Let the record show the witness hands to the court a single sheet of paper on which there appears some writing in longhand.

Are these the only notes that you made either at the time or shortly after the time of this interview with Mr. Johnson?

The Witness: Yes, they are, your Honor.

The Court: Will you read them?

The Witness: In the upper left-hand corner are the words "still out." Do you wish that explained?

The Court: After you read it.

(Testimony of R. L. Frick)

The Witness: "Dated 7/31/44. 1430 South 28th Street, San Diego. June 30. Back of head: Queens Hospital, July 1st, July 6th. Ashore until July 22nd. Expenses paid. Boarded S. S. Philippa. Sailed same day. Ar (arrived) San Francisco July 30."

And then down below, "\$107.50." Then there is a pencil notation, "150," with a line, a slanting line.

The Court: Now you were going to tell us the meaning [173] of the expression in the upper left-hand corner, the words "still out."

The Witness: Indicating that the vessel was still out on the voyage for which the libelant had shipped at the time that the notes were made.

The Court: During this interview with Mr. Johnson what files or documents did you either have before you or had you examined prior thereto?

The Witness: All I can recall is, I believe, the first report from the vessel, or a copy thereof, that abstract from the U. S. Public Health Service, or Queens Hospital, whichever it was which we referred to before—I don't recall anything else.

The Court: By that answer are you referring to more than one instrument?

The Witness: I don't think I understand your Honor's question.

The Court: Read the question.

(The record referred to was read by the reporter, as set forth above.)

The Witness: No, I only refer to two documents that I can recall, the two I referred to.

(Testimony of R. L. Frick)

The Court: Now one of the two documents is in evidence here, this clinical report from the Queens Hospital.

The Witness: Yes, that is one, at least I had a copy of [174] that as I recall.

The Court: Did you have a copy of the other instrument here in the court room?

The Witness: No, I do not.

The Court: Do you know where it is?

The Witness: No, I do not, your Honor.

The Court: At the time of this interview with Mr. Johnson what was your connection with the office of Attorney Black?

The Witness: I am employed by Mr. Black as a member of his staff. I handle maritime claims, supervise the investigating work aboard vessels and investigating claims generally, adjusting work, interviewing, locating and interviewing witnesses, trial preparation, the correspondence involved, and so forth.

The Court: How long prior to this interview with Mr. Johnson had you been so engaged?

The Witness: Roughly about 14 years, I believe.

The Court: And if you can, will you give us an estimate of the number of interviews that you had while serving in the capacity that you have just described since this interview with Johnson on July 31, 1944?

The Witness: Well, that would be difficult.

The Court: Would it run into the hundreds or the thousands? [175]

The Witness: Well, in July they had taken on either one or two additional members of the staff there who do a great deal of that work too. I would say the best

(Testimony of R. L. Frick)

estimate I could make is that I might average four or five a day.

The Court: That would be five days a week?

The Witness: Yes. We lock them out like a bank on Saturday morning and try to catch up on some other work.

The Court: At the time of the interview with Johnson did you have information as to what had been paid to him on account of maintenance while he was in Honolulu after he had left the hospital?

The Witness: You mean understanding of what he had told me, your Honor, himself?

The Court: Yes.

The Witness: No, I knew nothing about it except what he told me.

The Court: He told you he had been paid at the rate of \$2 a day maintenance?

The Witness: No, he didn't state the rate at all; he simply said he had been paid his expenses by the company's agent or somebody there during his time between his discharge from the hospital and his aboarding of the *Philippa*; during that period he told me his expenses had been paid.

The Court: In other words, he didn't tell you how much?

The Witness: No, I don't think he did, your Honor. I [176] don't think I inquired of the rate at all.

The Court: During this interview did you ask Johnson how he happened to come to your office?

The Witness: I don't think I asked him that, your Honor; no. I assume he came in the regular course.

The Court: You had no information from Pacific Tankers or the War Shipping Administration or any other

(Testimony of R. L. Frick)

source that this man had been sent to you for consideration of some possible claim?

The Witness: I am certain I had no word from the War Shipping Administration. The Pacific Tankers might have telephoned me, as they frequently do, and simply told me that they are sending a claimant over to the office. I don't remember whether they told me or not in advance.

The Court: What, if anything, did you tell this man as to what his rights were?

The Witness: Well, I explained to him that he was entitled, as a matter of law, to wages from the time up to which he had been paid after leaving the vessel until his arrival back at the United States or until the termination of the voyage, whichever occurred first, subject to the qualification that if he arrived back and the vessel was still out and he was still disabled or ill, that he would be entitled to continuing wages during that period of disability not to exceed the full voyage. [177]

The Court: May we see Exhibit 15? (The document referred to was passed to the court.)

The Court: Having had the benefit of reading a copy of the abstract of the clinical record taken from the U. S. Public Health Service Relief Station, Honolulu, particularly the recitals appearing under the heading "Condition of Patient upon Admission" and under the heading "Condition of Patient on July 5, 1944"—

The Witness: Yes, your Honor.

The Court: —and having been told by this man that he still had headaches but he had been told that he would have further headaches but these would wear off, did you give consideration to this aspect of the matter, namely,

(Testimony of R. L. Frick)

that you were talking to a man who made no pretense of being expert in the field of medicine or in the field of law, that he was entitled to independent medical advice and independent legal advice?

The Witness: Your Honor, I believe your question assumes something that I was not told. He didn't tell me at that time he had any headaches or any other head symptoms or anything else the matter with him. He told me he was perfectly well and fully recovered, and he appeared to be so to me.

The Court: Then let us rephrase the question.

Based on the recitals in this clinical record, of which [178] you had a copy, and the fact that this man did not represent himself to be either versed in medicine or versed in law, and that you were there serving as the legal adviser of the underwriters of the ship, did you suggest to him that before he signed any instrument purporting to forever relinquish any claim that at least he ought to consult a physician or an attorney or both?

The Witness: I did not, your Honor.

The Court: Can you tell us why not?

The Witness: Well, the question of there being anything wrong with the boy at that time didn't seem to be in the picture to me at all. There was nothing to indicate he was anything but perfectly normal. He moved around perfectly normally, he talked perfectly normally, acted and looked perfectly normal, and admitted to me that he was fully recovered. The mere fact that there was a prognosis of an indefinite period of time meant nothing to me. I have had any number of cases where the prognosis was overly optimistic, and many times when it was

(Testimony of R. L. Frick)

too pessimistic. When a man walks in and tells me he is fully recovered and there is nothing in the world that appears to me to suspect anything else, I feel justified in taking the position that he was assumed to be well.

The Court: Did you think you were justified in that assumption in the face of the recital of this abstract, this clinical abstract? [179]

The Witness: Yes, I did in connection with my experience with clinical abstracts in the past.

The Court: If he were your client would you ever have advised him to sign such a release on the basis of the facts that you knew at the time?

The Witness: I think I would have advised the man to accept an offer made to him but if I considered it a fair offer.

I might say that if I had the least reason to feel that such a thing were necessary I would certainly have asked this claimant to go to the Marine Hospital and bring back a certificate of out-patient hospital treatment, which I do on numerous occasions.

The Court: Did you give any consideration to the matter as to whether or not he was entitled to transportation from San Francisco to the port where he had shipped, or from which he had shipped?

The Witness: No, I don't believe I did.

The Court: Well, as you have since reflected on the matter, have you any statement to make on that point?

The Witness: Only that I personally believe there is a great deal of doubt as to whether he is or is not entitled to that transportation.

Mr. Toner: For instance—may I interrupt—I might clarify that matter. I believe the regulation has divided

(Testimony of R. L. Frick)

the [180] country into three areas, and if a man ships out of one area and returns in the same area he is not entitled to transportation; but if he ships out of one area, say the Pacific Coast area, and lands in the South Atlantic area, below Cape Hatteras, then he is entitled to transportation from that area to his Pacific Coast area. The country is divided roughly into three sections, one on the Atlantic and one on the Pacific.

I think that is covered in one of the regulations that is attached or is made a part of the shipping articles.

Mr. Fall: That has no reference to injured men, if the court please.

The Court: Let me inquire: This figure as represented by the amount of the check paid to this man, does that consist of a total of \$150, plus 29 days' pay, less taxable deductions?

The Witness: Yes, your Honor, if that is the exact period. I think he was paid up to and including July 1st. It includes his unearned or contractual wages from the day following that until he arrived back in San Francisco, less taxes and plus \$150.

The Court: Was it your understanding at the time of this interview with Johnson that he was entitled to no further maintenance even though he had made no settlement?

The Witness: Even though he had made no settlement? [181]

The Court: Yes.

The Witness: Yes, it was my understanding, based upon what he told me himself, that he was fully recovered, that the question of maintenance wasn't involved at all other than the past maintenance which he

(Testimony of R. L. Frick)

admitted having been paid in Honolulu. He had just arrived home the day before, at which time he admitted he was recovered fully, so there was no maintenance involved as I could see. It had nothing to do with signing the release, the question of what maintenance he would be entitled to.

The Court: I have no other questions.

Recross-Examination.

By Mr. Fall:

Q. Mr. Frick, you did not show Mr. Johnson the copy of the report from the vessel indicating the circumstances surrounding the accident and his injury?

A. I don't recall handing it to him. I may have shown it to him, I don't know.

Q. That report indicated to you that he did have a cause of action against the ship or its operators, didn't it? A. Why, not necessarily at all.

Q. Not necessarily, but it was evident upon that report that the man probably had an action against the ship or its operators.

A. Well, that is not the question you first asked. [182] This is getting to be rather legalistic here.

Mr. Toner: If the court please, I object to the form of the question as being argumentative and not a question.

The Court: Well, I think the question is open to the criticism interposed, but counsel is entitled to inquire whether at the time of this interview Mr. Frick had some doubt as to whether or not Johnson had a claim on account of the injury that he had sustained. You might answer that.

(Testimony of R. L. Frick)

By Mr. Fall:

Q. Did you have a doubt at the time Mr. Johnson signed this claim as to whether or not he had a claim against the ship for damages?

A. Well, if the contents of the accident report were to be relied upon, it being absolutely accurate, I don't recall whether it was a copy or not, it might have been just copied, I don't know, but if we were to rule out the possibility of any contributory negligence or any intoxication or maybe a dozen other things and assume that everything on the report was just what it purported to be, I suppose I would have no doubt that he would have a claim against the vessel.

Q. The report did indicate that Dudder dropped a block and it struck Mr. Johnson?

A. I believe the report did so indicate, yes; but being asked whether he had a cause of action I don't know whether he had a cause of action based on the accident report. [183]

The Court: Let me interrupt there.

Did I understand you to say that Johnson told you he didn't know how the accident happened?

The Witness: That was my understanding. He told me that he had been hit on the head and had been, I understood, either knocked out or dazed or something of that kind, and had been told afterwards by other members of the crew that he had been struck by a block. It was certainly my understanding that he didn't know of his own independent knowledge how he was injured until somebody told him.

(Testimony of R. L. Frick)

The Court: Did you disclose to him either this report or the substance thereof explaining the circumstances under which he had been injured?

The Witness: It seems to me that I had the report right before me, and as I very often do, it seems to me I read the contents, that is, the description of the accident to him, and asked him if that was the correct version of the accident, of what had happened. It seems to me that is what I did.

The Court: You do have a recollection to that effect?

The Witness: Yes, that is my impression now. I don't believe I handed him the accident report to read.

Mr. Toner: If the court please, may I move that any references to the manner in which the accident happened which may appear on the initial report be stricken from the record on the ground that they are admissions by a fellow-servant [184] who is not authorized to make such admissions of possible negligence.

The Court: Of course it is not clear to me just what is meant by that objection. Do you have the document?

Mr. Toner: No, I don't, if the court please.

The Court: I don't quite get the picture as you have stated it here.

Mr. Toner: As I understand it, counsel is making an effort to prove by this witness that there was some negligence involved in the dropping of the block, and in order to make such proof he is attempting to use statements of the initial report of the accident.

Now such statements made on an initial report of accident from one branch of a concern or corporation or government to another branch of the government are certainly not admissions. They are not admissions to the

(Testimony of R. L. Frick)

libellant. Those are intramural affairs. I don't think that there is any inference of negligence that can possibly be drawn from such matters which appear on a first report.

The Court: Well, now, to what report are you referring?

Mr. Toner: Mr. Frick stated that at the time of his interview with Mr. Johnson he had access to some first report from the vessel.

The Court: When you speak of that report, are you referring to a report from the master of the ship or what? [185]

Mr. Toner: Well, there is very frequently a report made from the master of the ship—I presume it is made by the master. Perhaps we can find out from Mr. Frick where the report comes from.

The Witness: Very often from the purser, more often not the purser, but the purser signs it.

Mr. Fall: Under the directions of the master?

The Witness: I don't know. I suppose constructively so. I don't know whether the master sits there as he makes it out or not. I doubt it.

The Court: The reason why the objection isn't clear to me is because I don't know whether you are referring to a report which you have generally described as a report from the vessel, as a report from someone authorized to make it or someone not authorized to make it.

Mr. Toner: I would say that it is a report made by someone who was authorized to make such a report to the office of the general agent for the ship. I don't see how that is a matter that can be construed to be an admission of liability or, as a matter of fact, I don't think it is admissible in evidence for any purpose.

(Testimony of R. L. Frick)

Mr. Fall: I do believe it is.

The Court: Under the present state of the record the report was evidently an authorized report from the vessel and without some further showing it would seem that the matter is [186] a proper part of the evidence in this case.

Mr. Toner: If the court please, in the hands of the attorneys I believe it becomes a privileged communication.

Mr. Fall: Oh, no. I have got a case right on that point.

The Court: Just a minute. The privilege is one which the client may invoke against counsel but that isn't the present situation.

Mr. Toner: The client in this case I believe is the respondent, at least indirectly, in this case and the client, Mr. Black's client, is the respondent in this case through the general agent, Pacific Tankers.

The Court: You say Mr. Black?

Mr. Toner: Mr. John Black is the agent, and it is the document in his possession given to him by the Pacific Tankers, who are the general agents for the United States.

I believe that the United States is entitled to claim such privilege, attorney and client privilege.

The Court: The record so far shows that Mr. Black is not representing the United States but was representing the underwriters of the ship. In other words, take a situation in ordinary civil affairs, a manufacturing concern carries insurance and an accident occurs by reason of which the manufacturing concern is confronted with a claim. The assured refers the matter to the company carrying the insurance. The [187] insurance company re-

(Testimony of R. L. Frick)

fers the matter, not to the attorney of the assured but to its attorney. In this present state of the record Mr. Black was acting, not as the attorney for the assured, to wit, the United States, but acting as the attorney for the underwriters, the insurance company, and that doesn't seem to create the relationship of attorney and client as between Mr. Black and the United States. As a matter of law, don't you think that the statutes of the United States forbid the attorney for the underwriters to be the attorney for the United States?

Mr. Toner: The United States has a number of branches, no doubt. The United States as such doesn't own this ship. The United States through the War Shipping Administration owns the ship.

The Court: The War Shipping Administration—

○ Mr. Toner: Is a branch of the United States.

The Court: —is an agency set up by the United States, yes, it is an agency of the United States.

Mr. Toner: Yes, it is an agency of the United States.

The Court: But it has no corporate capacity.

Mr. Toner: That is true.

The Court: So the title is in the United States.

Mr. Toner: Yes.

The Court: Except where statute sanctions the same, no one may act as attorney for the United States. Unless there [188] is some statute to which you can direct our attention, we are inclined to conclude that Mr. Black could not be attorney for the United States.

* * * * *

(Testimony of R. L. Frick)

The Court: Let me interrupt you to ask the witness:

As far as you can recall, was your office furnished with reports of accident that might be the subject of a later claim?

The Witness: You mean in general and all claims?

The Court: Was that the usual practice?

The Witness: We get lots of reports from the vessel, yes, illness or injury reports. On many, many cases, we don't. We have nothing from the vessel at all sometimes for long periods of time and sometimes never.

The Court: In those instances where reports have been received, as far as you can recall are they reports from the master?

The Witness: You mean signed by the master, your Honor?

The Court: Purporting to be from the master.

The Witness: No, I think in the majority of cases, particularly in later years during the war, I think the report is made by the purser or purser's pharmacist's mate—I think in the majority of claims—and sometimes by various officers, sometimes by the master. But I think more often they are made by the purser or purser's pharmacist mate in latter years.

The Court: Let me see if I understand this testimony. Are you referring to reports that are sent in without the master's approval, without the master knowing of any such re- [193] port being sent or what kind of reports are they?

The Witness: Well, they are uniform reports, your Honor. What I am referring to are reports known either as accident reports or illness reports from the ves-

(Testimony of R. L. Frick)

sel. Sometimes they call them the first report from the vessel.

In other words, in most cases it would be the first report, the first advice on the claim we get. I don't know personally whether the purser sometimes sends them in independently of the master or not. Very likely he does. I don't know what the routine is there.

The Court: Do you wish to be heard?

Mr. Fall: Yes. When I initiated that question in the beginning it was for the purpose of knowing what he knew and having that knowledge affect his release without divulging the contents of the report to the libelant so that the libelant would be on an even basis with him. But I think we can clear up, in addition to that, that the underwriter—

Q. In addition to that report, isn't it a fact that the underwriters require that the master make a report to the underwriter of all injuries?

A. Not that I know of.

Q. Isn't that included in your policy?

A. I don't know.

Q. You are familiar with that policy, are you not?

A. Some portions of it. It is a very voluminous poli- [194] cy.

Q. As a matter of fact, it is the custom of the master to make a report of all injuries to the underwriter, isn't it?

A. Not to my knowledge, Mr. Fall, though as I have tried so hard to explain, I know of many cases where the master apparently doesn't make the report at all, the purser makes the report.

(Testimony of R. L. Frick)

Q. I haven't seen the policy but I have talked with some masters with reference to it.

A. I have seen any number of reports signed by the purser, there is no question about that, also signed by various officers other than the captain.

Q. Didn't you bring that copy of that report down to Los Angeles with you, the first report?

A. I think I have a copy of it; yes.

Q. May I see it?

A. Yes. (Producing document)

The Court: We will take a 10-minute recess.

(Short recess.)

Mr. Toner: If the court please, we found among the papers here a report. It is not a master's report, it is a purser's report, signed by R. E. Agnew, which the court may read.

Mr. Fall: When the court is through I want to ask the witness some questions with reference to that report.
[195]

The Court: Yes. What were you going to say, Mr. Fall?

Mr. Fall: I want to ask the witness some questions with reference to this report.

The Court: Let it be marked for identification at this time.

Mr. Fall: Yes. I was going to ask, would it be marked Libelant's Exhibit 25 for identification?

The Court: Yes.

(The document referred to was received and marked Libelant's Exhibit No. 25 for identification.)

(Testimony of R. L. Frick)

By Mr. Fall:

Q. Mr. Frick, I notice this report has been all folded up and a little while ago when you got this yellow piece of paper, the notes that you made of your conversation with Mr. Johnson on July 30 of 1944, you reached in your pocket and you took a number of papers out of your back left-hand pocket all folded up, and among these papers you took out this other yellow paper with your notes of that conversation, isn't that correct? A. Yes.

Q. And this paper was in your pocket too?

A. Yes.

Q. Now I show you here Libelant's Exhibit 25 for identification. Is that the copy of the report that you had before you when you talked with Mr. Johnson?

[196] A. Yes, it undoubtedly is.

Q. And the portion of that report you said a few minutes ago—

A. I don't have any office receipt; date receipt stamp on there, but I think undoubtedly it is the one.

Q. You said that you did advise Mr. Johnson of certain contents of the report, that is, as to how the accident happened?

A. I said I had the impression that I had read off to him that portion of the report showing the circumstances of the accident.

Q. And your impression was that under No. 11 you read the following then: "Sailors were stowing the forward port side boom and the guy block was caught on a davit, one of the men cast it off and line and block fell striking this sailor on the back of the head, block causing a large cut on this man's scalp. Five stitches were taken in his head at the Navy Dispensary." Now

(Testimony of R. L. Frick)

with reference to that you now say that your recollection is that you read off at least the part that told how the accident happened?

A. I think I did, as I very often do, in order to get the version as a basis for a statement, I simply say, "Now, here is the report, is this about the way it happened," and I read it to him.

Q. Now, this report is on a form report of accident. [197] Is that a form supplied by the underwriters?

A. I don't know of my own knowledge. We have quite a number of different forms that different steamship companies use. They are all similar.

Q. On the top of this report appears: "Notice. This report must be forwarded at once. The ship owner is liable for \$300 fine if injuries are not reported at once." That appears on the top of that report, does it?

A. Yes.

Q. It is a fact that your underwriters do give these report forms to the various vessels, isn't that true?

A. I don't know at all. I don't want to speculate on it. As a matter of fact, I am almost certain that some of the steamship companies use their own forms that are not supplied by anybody else.

Q. This particular form is supplied by the underwriter that you represent?

A. I believe that one is. I am not sure of that even. I never inquired into where the forms originated.

Mr. Fall: I have no further questions.

Mr. Toner: I have no further questions.

The Court: Very well. You may step aside.

(Witness excused.)

Mr. Toner: The respondent rests. [198]

Mr. Fall: Call Mr. Johnson in rebuttal.

ROBERT C. JOHNSON,

called as a witness in rebuttal, having been previously duly sworn, was examined and testified further as follows:

Direct Examination.

By Mr. Fall:

Q. Mr. Johnson, when you were in the office of John Black in San Francisco on July 31st of last year, did Mr. Frick read to you anything contained in the report of accident, Libelant's Exhibit No. 25 for identification?

Will you read that? A. Read the full report?

Q. Yes, read the full report.

A. (Examining document)

Mr. Toner: If the court please, I would like to object to the question as multiple. The question is, did Mr. Frick read anything. I think that the question should be asked in several parts.

The Court: The question should be rephrased calling the witness' attention to some specific portion or portions of the document.

Mr. Fall: Yes, I will do that, your Honor.

Q. Calling your attention to the portion of the document under No. 11, will you read that?

A. (Examining document) [199]

Q. Did Mr. Frick read to you the whole of that statement under No. 11 or any part thereof?

A. No.

Q. Did Mr. Frick tell you he had a copy of the report sent from the ship relating the report of the accident?

A. No.

(Testimony of Robert C. Johnson)

Q. Did at any time Mr. Frick, during this conversation, tell you any of your rights regarding bonus?

A. No. We did discuss the bonus I would have gotten had I been aboard the ship; other than that, no.

Q. Did he tell you you were not entitled to any bonus after you separated from the ship? A. No.

Q. Did you at any time tell Mr. Frick that you had a claim for damages by reason of your injury, or words to that effect? A. No.

Q. Or that you had a claim for injuries?

A. No, not at any time.

Q. Did you tell him at the conversation that you felt you had a claim for damages for injuries received?

A. No. He asked me if I thought I did, and I said no.

Q. Was that the extent of the conversation with reference to claim for injuries? A. Yes. [200]

Q. Did you tell Mr. Frick how much money you had been paid in Honolulu for maintenance?

A. I don't recall whether I told him that or not.

Q. After hearing Mr. Frick testify that the check for \$247.10 was not prepared in his office, has that refreshed your recollection any at all with reference to where that check was obtained by you?

A. To the best of my recollection I was signing the release papers as the secretary was typing out the check. That is the best I can remember.

Mr. Fall: Your Honor, there is one thing that I probably should have made a part of the libelant's case and ask leave to ask the libelant three or four questions as a part of libelant's case before he rests with the pur-

(Testimony of Robert C. Johnson)

pose to show what has been paid out or the reasonable value of his maintenance during the period of time after he left San Francisco on July 31 of 1944.

The Court: In other words, you are asking leave to re-open the case in chief for that limited purpose?

Mr. Fall: Yes, your Honor.

Mr. Toner: I would like to have the record show an objection to reopening the case in chief for that purpose.

The Court: Will the respondent be prejudiced thereby?

Mr. Toner: It is rather difficult to tell because I don't know what is coming. The statement that counsel just made I believe has been covered by the witness' testimony that he spent approximately \$3 a day in Honolulu.

Mr. Fall: He said over \$3; about \$3.50.

If it will be stipulated that the reasonable value of what has been expended in his behalf for his maintenance has been about the same as it was over there, I mean has continued, that is all that I desire to show. Just what the reasonable value of his maintenance would be after he came back from San Francisco on July 31 of 1944.

Mr. Toner: I don't think that I would be justified in making any stipulation to that effect. I renew my objection to reopening the case for that purpose. He has testified that he lived with his parents.

Mr. Fall: I have in mind, your Honor, that these two orders of the War Shipping Administration relative to maintenance, and I thought probably they would cover it, but in view of some other decisions I think that I should have some other evidence by him upon that point.

The Court: If it should develop that the respondent needs time to meet this additional evidence, the court will

(Testimony of Robert C. Johnson)

indicate an application for that purpose. You may ask them.

By Mr. Fall:

Q. Mr. Johnson, after you left San Francisco on July 31 of 1944 and up to the present time, about what has been expended or incurred by you per day for your maintenance? [202]

A. That would be hard to judge, Mr. Fall. Even though I live with my parents.

Q. What would be the reasonable value of what you receive at the present time per day?

Mr. Toner: If the court please, I would like to object to the question on the ground that there is no foundation laid for this type of testimony; it calls for a conclusion, and I don't believe that the witness is capable of making such an estimate.

Mr. Fall: I can lay a little bit more foundation, your Honor.

The Court: I think there is merit in the criticism.

Let me inquire: Since you came down here following your arrival in San Francisco on July 30, 1944, when you were not at some government hospital or rest home, were you living with your parents or part of the time with your parents and part of the time with some other relative?

The Witness: Yes, your Honor.

The Court: And during the period that you resided with your parents who paid for your room and board?

The Witness: Well, the expenses were—my father and mother stood the expenses, but I felt an obligation to repay them as long as I am living there and am no

(Testimony of Robert C. Johnson)

longer a minor. I would have to pay the money if I lived elsewhere.

Mr. Toner: If the court please, may I ask that the [203] answer be stricken as calling for a conclusion of the witness?

The Court: You mean everything after the statement that he lived with his parents who paid for those expenses?

Mr. Toner: Yes.

Mr. Fall: I think the statement in explanation that he was under obligation to repay should remain in the record.

The Court: That is a conclusion that may or may not properly be drawn from some further evidence, so that part of the answer is stricken out, but the witness may tell us under what circumstances he arranged, if he had any arrangement, to accept room and board from his parents or other relatives.

By Mr. Fall:

Q. Mr. Johnson, are your folks giving you this room and board for nothing? A. No, not for nothing.

Q. Are you to repay them?

A. At some future date as I have the money I shall repay them.

Q. Did you spend all of the money that you had when you got out of the rest home on your maintenance?

A. Yes.

Q. About how much money did you have at that time?

A. I had the \$400 some-odd dollars from the ship when [204] I was paid in Honolulu, plus the \$200 some-odd dollars from the check.

Q. That you got in San Francisco? A. Yes.

(Testimony of Robert C. Johnson)

Q. And have you been forced to draw money—with-
draw that.

Have you ever borrowed money from your folks since
your money was all expended? A. I have.

Mr. Toner: If the court please, I should like to ob-
ject to the question because it doesn't seem to be tied in
with the alleged purpose of proving maintenance.

Mr. Fall: Suppose I get to it. I am only asking these
questions one at a time.

Mr. Toner: Whether the witness borrows money
from his parents or not I believe is utterly immaterial.

The Court: Unless the money was used for some
purpose relevant to this lawsuit.

Mr. Fall: Yes. I expect to show that, your Honor.

Q. This money that you borrowed, what did you use
it for?

A. I would use it to help pay the food and what little
entertainment was offered me.

Q. What type of home do you live in down there in
San Diego? [205]

A. Well, it is a rented home.

Q. Do you have a room of your own?

A. Yes, I have a room of my own.

Q. Your mother makes your bed? A. Yes.

Q. And all your linens are furnished?

A. That is right.

Q. All your wash is taken care of? A. Yes.

Q. Your cleaning for your clothes? A. Yes.

Q. All of your foodstuffs are supplied?

A. That is right.

Q. Cooked at your home? A. Yes.

(Testimony of Robert C. Johnson)

Q. What would be the reasonable value of those services if you had to go out and pay for them on the outside?

Mr. Toner: Same objection as to opinion evidence being called for. I don't think this witness is qualified to give that estimate.

The Court: Mr. Reporter, will you read the last question and answer?

(The record referred to was read by the reporter, as set forth above.)

The Court: I am inclined to think that that is a matter [206] for the court to determine rather than the witness.

Mr. Fall: I am just wondering, your Honor. It occurred to me that a man might testify as to the reasonable value of his services that he obtained just as he might testify as to the reasonable value of personal property.

The Court: He can testify to the value of property he owns, but that is different from testifying to what it would cost someone else to supply room and board for him.

By Mr. Fall: What would be the reasonable value of those services if you went out on the outside and had to pay for them?

Mr. Toner: Same objection.

By Mr. Fall:

Q. Put it this way: What would they cost you if you had to obtain those same services if you were to go out and buy them on the outside?

Mr. Toner: Same objection.

The Court: I think that there is going to be no quarrel here that it is a matter of such common knowledge that

(Testimony of Robert C. Johnson)

it certainly must cost between \$3 and \$4 a day to live. There has been so much publicized in the way of government reports without referring to newspapers on the subject, that one must be very stupid who didn't know that much.

Mr. Toner: I think the court can take judicial notice of the regulation that sets maintenance at \$3.50 a day, commencing with August 1, 1945. I have no objection to that.

Mr. Fall: I will withdraw the question.

Mr. Toner: I don't want to leave the open-ended opportunity that this witness has with this question.

Mr. Fall: I will withdraw the question so we will obviate that ruling.

The Court: You are not going to claim more than \$3.50 maintenance a day, assuming that the court should find liability in favor of the libelant.

Mr. Fall: No, your Honor.

The Court: I doubt whether the government will dispute that amount if liability should be established.

Mr. Toner: We don't dispute the fact of the amount; we dispute the liability therefor inasmuch as this man is living at home.

Mr. Fall: I have no further questions of this witness.

Mr. Toner: Just one question.

Recross-Examination.

By Mr. Toner:

Q. During all this time, Mr. Johnson, you owned an automobile, did you not? A. Yes.

Q. What is the reasonable value of that automobile?

A. I don't know what the OPA prices are.

(Testimony of Robert C. Johnson)

Q. What kind of an automobile is it? [208]

A. It is a 1941 Chevrolet.

Q. When did you buy it? A. In 1941.

Q. Did you buy it while you were at San Diego?

A. As long as I had money; yes.

Mr. Toner: That is all.

Mr. Fall: I have no further questions.

(Witness excused.)

Mr. Fall: I have no further rebuttal.

The Court: I take it both sides rest as far as the evidence is concerned?

Mr. Toner: Yes.

The Court: Are these issues then to be determined: First, has liability been established as against respondent; secondly, if liability did exist has that liability been discharged by virtue of the release admitted in evidence?

Mr. Toner: I would think, if the court please, those are the two general issues. I believe that there are two portions of the first of the issues. They are (1), is there a liability for damages and (2) is there a liability without fault. I would believe that the question of liability is divided in that way in two parts.

The Court: I am not sure that I follow you there. Just what are you stating about the issue of liability having two aspects? [209]

Mr. Toner: There are really two aspects as to the issue of liability. The first is, if the man has been injured on board ship in the course of his employment under the admiralty rules he becomes entitled to wages to the end of the voyage or until he recovers and main-

tenance for the same period. That is a liability without fault similar to our workman's compensation law.

The Court: I think I understand now. In other words, there are really two sides of liability involved in this case.

Mr. Toner: That is correct.

The Court: The liability which arises regardless of fault, or the absence thereof, and that is a liability for maintenance and cure.

Mr. Toner: And wages to the end of the voyage.

The Court: And wages to the end of the voyage. The other is the liability for damages on account of injuries sustained—

Mr. Toner: Through negligence.

The Court: —through negligence.

Mr. Toner: Yes. Those are the two subheads of the main head of liability.

The second main head is the question of the validity of the release.

The Court: How do you gentlemen propose to present this matter, to be argued orally? [210]

Mr. Fall: I would like to argue it orally; yes, your Honor.

Is your Honor's calendar tomorrow open or do you have some other matters on?

The Court: Tomorrow afternoon we have a pre-trial, tomorrow morning we have something listed as a pre-trial respecting which, however, government counsel—it is an eminent domain case—has been engaged in some negotiations. Whether that will involve a continuance tomorrow morning or not, I would have to make an inquiry.

Mr. Fall: If it is available tomorrow morning, we could definitely finish our argument tomorrow morning and the continuity of the trial would not be broken.

The Court: Very well. We will set the matter down for oral argument tomorrow morning at 10:00 o'clock.

Mr. Fall: Thank you, your Honor.

Mr. Toner: If the court please, before we adjourn here is one matter that I would like to perhaps have an unofficial arbitration in the case on.

At the pre-trial hearing we concluded that the examination of Dr. Dickerson would be for the joint benefit of the court and libelant and the respondent, and I believe that it is only fair that regardless of the outcome of the litigation that all of the expenses of the doctor's examinations and his testimony be borne jointly by the two parties.
[211]

Mr. Fall: Well, now, here was the situation with reference to that examination: It was agreed by the respondent that if we used Dr. Dickerson they would pay for the cost of his examination. Now that is what has been done.

Mr. Toner: We have paid for the examination, but I don't see why the respondent should be obligated to pay for the medical testimony in the libelant's cause.

The Court: When you say the libelant—

Mr. Toner: The cost of the doctor coming down here yesterday.

The Court: What was that cost?

Mr. Toner: I don't know. I should imagine he would not come down here for less than \$75.

Mr. Fall: I think it would be more apt to be \$100. I don't know, but most of these specialists have charged \$100 and I assume that that is what his fee would be.

Mr. Toner: We paid \$75 for his prior examination and we have paid about, I believe, \$40 for X-rays and hospital expenses, so that we come off of the short end of the deal if the libelant pays for the medical testimony, for the doctor's testifying fee.

Mr. Fall: Here is the situation, that this libelant didn't ask for it at all, and he has been placed in a position of having to enforce his rights this way, and we have entered into agreements previously. Now as to how we are going to [212] defray the expenses—and I think that it is proper to go ahead as we agreed—we agreed that the respondent would pay for the costs of Dr. Dickerson's examination and it was further agreed that we would split the cost of his witness fee.

Mr. Toner: That isn't exactly correct. I agreed to lump the entire amount of the examining fee and the hospital fee and the witness fee and pay for half of the total.

Mr. Fall: I didn't understand it that way at all because of our previous understandings that you would defray those expenses and when it came to Dr. Dickerson's matter I asked you if you would defray half of his expenses and you said yes.

Mr. Toner: Half of his expense, half of his total expense.

Mr. Fall: The witness fee is what we were talking about.

The Court: These other examinations, were they made at the joint request of libelant and respondent?

Mr. Toner: They were made after the pre-trial hearing. I would say at our joint request and for our joint benefit.

The Court: Did he report to both sides?

Mr. Toner: Yes, he reported to both sides.

The Court: Then it looks like you ought to share them.

Mr. Fall: Our arrangement was this: I was going to use [213] Dr. Dickerson and so the respondent then said, "Okay, if you use Dr. Dickerson, if we can share in his report we will pay the expense of the examination," so they were going to pay the expense of one examination. If I had said no they would have to go out and have had the expense of an examination by another doctor. They were putting out just what they were going to have to do.

The Court: Is this the situation: But for some kind of a private arrangement that counsel entered into, libelant would have been obligated to defray the expense of bringing Dr. Dickerson in as a witness?

Mr. Fall: Definitely; yes.

The Court: Now in lieu of that some arrangement apparently was made. Can't you gentlemen recall just what that arrangement was?

Mr. Toner: I agreed to pay for the examining fee and, as a matter of fact, I also paid the hospital bill for the X-rays and several other minor items. I felt that that was a matter that didn't make any difference whether we paid it to Dr. Dickerson or some other doctor. There is no question about that.

The Court: Those examinations were made at the government's request and primarily for its benefit?

Mr. Toner: Well, they were made also at the request of libelant and for libelant's benefit, [214].

The Court: Is that the arrangement that you agreed upon?

Mr. Toner: I agreed to pay those charges, no question about that.

The Court: Without asking the libelant to share therein?

Mr. Toner: No, I didn't ask libelant to share in that, and I agreed to pay 50 per cent of the total medical expense of Dr. Dickerson's trip down there, the total medical expenses.

The Court: I am afraid the misunderstanding is of course an unfortunate one but I don't think it is altogether at the door of the libelant that the misunderstanding arose. In the light of the information just given here, it seems that the solution is for libelant and respondent to share the expense of bringing Dr. Dickerson here and for respondent to pay the balance of the bill that it originally contemplated it would pay.

Mr. Toner: That has been paid, if the court please.

Mr. Fall: The only thing that has been paid is the doctor's bill, and we had told Dr. Dickerson to send it down and we would split that, and that was at our last talk.

The Court: Let that arrangement then be followed. Tomorrow morning at 10:00 o'clock.

(Whereupon, at 4:45 o'clock p. m., an adjournment was taken until 10:00 o'clock a. m., Thursday, November 15, 1945.)

[LIBELANT'S EXHIBIT NO. 14]

DORRELL G. DICKERSON, M.D., F.A.C.S.

1401 So. Hope St.

Los Angeles, California

October 17th. 1945.

Johnson, Robert C. 1430 So. 28th. St. San Diego, Calif.
Age: 26 years. Single. Occupation: Merchant seaman.
Injured: 6/30/44.

Supplemental report: Since here last he states that he has not worked or performed chores etc. Has not been under medical supervision or received any treatment from other sources. States that he has been living in San Diego.

Complaints: Headaches, extreme weakness, nervousness, inability to sleep and continued loss of weight.

Examination: This man's general physical appearance remains the same except there may be some loss in body weight. His complexion remains pale and he is thin and undernourished. Head is normal shape and size and the tenderness alleged on last examination (left occipital area) is still complained of. There are no visible abnormalities here. Ears, nares, mouth, throat and teeth negative. Post cervical lymph nodes not palpable. Thyroid negative. Neck is still complained of on all turning movements; chin to chest test somewhat difficult. Turning head to the right and left is limited. The 6th. and 7th. cervical spines are said to be tender. There is no muscle spasm, deformity or crepitus noted. Heart negative. Lungs normal on ordinary examination. Blood pressure 122/82. Pulse 78-80, regular. No abdominal complaints. All four extremities are normal. Back is negative.

(Libelant's Exhibit No. 14)

Neurological: Sense of smell normal. Pupils regular, equal and react to light. Fundi: Left fundus shows the veins to be full. Right is normal. Cups shallow. Discs are elevated. No weakness of ocular muscles. Nystagmus not present. No diplopia. Apparently unable to wrinkle and elevate the right brow. Trifacial fields negative. Position of tongue and bite normal. Auditory tests within normal. Shoulders equally strong. Deep reflexes in arms and legs equal and within normal. Superficial reflexes: Abdominals sluggish. Cremasters a bit sluggish. Plantar reflexes remain sensitive. No pathological reflexes. No clonus. Sensory tests within normal. Motor tests normal. There is some swaying in the Romberg. Gait and coordination normal. Tremors of closed eyelids and extended fingers. Cerebellar normal. Cerebral lobes: Frontal—normal. States that he cannot recall injury of 6/30/44. Speech normal. Stereognostic sensibility normal. Visual fields normal on confrontation tests.

Conclusions: This man's general condition remains about the same—except for the development of additional symptoms of neurosis. He is quite introspective and sits holding his head and shielding his eyes.

There are no signs to indicate focal brain lesion (discs are elevated). If headaches continue re-examination of the cerebrospinal fluid is indicated (pressure etc). The previous examination showed the pressure to be 90 mm. (H₂O).

Treatment: Rest—avoidance of sunlight—more rest in bed—increased caloric diet—maintenance of liberal fluid intake—symptomatic treatment for headache (mild analgesics). Hypnotics should be avoided. Narcotics should

(Libelant's Exhibit No. 14)

be avoided and if used for pain—this should be dispensed with caution: Codeine has been taken by this patient for his previous pains (report of 1/20/45).
dgd/jed.

D. G. Dickerson

D G Dickerson, M.D.

DORRÉLL G. DICKERSON, M.D., F.A.C.S.

1401 South Hope Street

Los Angeles, California

January 20th. 1945.

Johnson, Robert C. 1430 South 28th. St., San Diego, California.

Age: 26 years. Single. Occupation: Merchant Seaman.
Onset of present complaints: 6/30/1944.

Family history: Father alive. Mother alive. Brothers one. Sisters none.

Previous personal history: Born in Texas. California residence since 1941. Enlisted in Merchant Marine Service September 1942. Remains in the service. No surgery. No serious diseases. Injured June 30th. 1944. No nervous disorders.

Complaints: "Headache, sick stomach. My balance is poor. I am dizzy. I am nervous, tense and irritable."

Story of present complaints: September 1942 entered The Merchant Marine Service in San Diego, California. Service was uneventful until June 30th. 1944: A falling guy block fell from a distance of six to eight feet (from above) (weight of block said to be 15 lbs.)—this block struck the back of his head: He recalls walking away—

(Libelant's Exhibit No. 14)

was not unconscious—no recollection of injury. Received a scalp laceration. Accident occurred at Pearl Harbor, Hawaiian Islands. To the emergency hospital at Pearl Harbor and laceration sutured. Returned to his ship. Next day head was x-rayed at Public Health Center and sent to Queens Hospital, Honolulu and remained here for about one week. Returned as an out patient. Shortly after returned to The United States (last of July 1944). Arrived at San Francisco and then went to San Diego. Reported to doctor (sick call), San Diego. States that he got worse and came to Los Angeles—to The Public Health Service where he was examined and was sent to The French Hospital for one week. Then went to The Relocation Center, Santa Monica, Calif., and remained there for six weeks. Then returned to San Diego and remained at home until recently—then returned to Los Angeles a few days from this date 1/20/45. States that he has not been to any private physician. The Public Health Service has treated him on all occasions. Has been treated monthly. No lumbar puncture made.

Progress: "No improvement." States that headache is constant day and night. Experiences difficulty sleeping due to headache. Takes codeine—takes this as need—four-five tablets each day. Went to his home town of Sabinal, Texas a few weeks ago and saw Doctor E. N. Woods who declined to give him codeine. Upon return to Los Angeles states that he had an electro-encephalographic study made at Cedars of Lebanon Hospital (this was made before going to Texas 9/?/1944).

(Libelant's Exhibit No. 14)

Examination: A young, thin, undernourished white man of about stated age. He is accompanied by his mother to this examiner's office. He sits in the consultation room with his hands over his eyes (to shade them from light). He is very quiet and answers slowly and only when pressed for reply. He is about five feet six inches in height and weighs approx. 128 lbs. Complexion pale. Head is normal shape and size. Tender over left occipital region. No visible scars. States the laceration occurred in the left occipital area.

...2...

Johnson, Robert C.

Examination continued: Ears clean—tympanic membranes normal. Teeth normal. Throat negative. Nares unobstructed. Thyroid not palpable. Post cervical lymph nodes not enlarged. Neck: Alleges tenderness in all turning movements—right and left. Chin to chest tests performed with difficulty. Tenderness on sixth-seventh cervical spines. No crepitus or deformity. Turning head to the right and left limited to one-third normal range. Heart and lungs normal. Blood pressure 120 over 80. Pulse 78, regular. Abdomen flat. Extremities are anatomically normal. Temperature 99 degrees F. Back is normal.

Neurological examination: Olfactory sense normal each nostril. Pupils equal, regular and light reactions normal.

(Libelant's Exhibit No. 14)

Fundi: fullness of veins in left fundus. Right normal. Cups shallow. No diplopia. No nystagmus. No ocular weakness. Face: upper right brow: unable to elevate and wrinkle brow. Nasolabial folds are of equal depth. Trifacial areas normal. Bite equal. Tongue in midline. Auditory tests: Weber not referred—AC greater than BC. Shoulder girdles are equally strong and tone within normal. Reflexes deep: brisk, equal in arms and legs—one-one and one-half plus. Patellars and tendon Achilles equal, brisk. Abdominals present but sluggish. Cremasters sluggish. Plantars sensitive. No clonus. No Babinski, Chaddock, Gordon, Oppenheim etc. Sensory examination: Normal for all modalities—pain, touch, tactile, thermal, posture, vibratory etc. Motor: No weakness or atrophy. Romberg: Slight swaying observed. Gait natural. Coordination good. Cerebellar tests normal. Tremors of closed eyelids. Rapid tremors of extended fingers. Perspires freely from arm-pits.

Cerebral lobes: Frontal—clear; gives history—but cannot recall circumstances of his injury (only recalls what was told him).

Temporal—no aphasia.

Parietal—stereognostic sensibility normal.

Occipital—visual fields wide and symmetrical.

X-rays: Skull: Negative for skull fracture or signs of bone injury.

(Libellant's Exhibit No. 14)

Blood picture: Negative.

A lumbar puncture shows the following: Puncture made between 4th. 5th. lumbar spines. Patient lying on left side.

Novocain 1%: Pressure 90 mm. (h₂O). Fluid clear and colorless. Wasserman negative. Cells 3. Protein determination normal.

Electro-encephalographic examination: Shows negative.

(The above reports are attached to this report).

Conclusions:

This young man is suffering from residual effects of concussion of the brain (post concussion syndrome).

...3...

Johnson, Robert C.

Conclusions:

There were two examinations of the central nervous system and no positive neurological findings were detected.

The general physical examination is negative—except that he is below standard physically (undernourished).

The electro-encephalographic study made at Children's hospital is negative. X-rays of the skull are uninteresting. Lumbar puncture is also negative.

(Libelant's Exhibit No. 14)

Prognosis: Good for eventual recovery. Full recovery should occur without permanent disability—but—this may require eight to twelve months.

Treatment:

Increase his fluid intake to about two liters daily.

Full diet—rich in red meats and protein.

Should avoid direct rays of the sun.

Should avoid excessive heat.

Moderate exercises—such as walking.

Maximum rest periods.

Analgesics for headache (if needed).

Codeine should not be used. (only for extreme pain).

Recheck examination should be made at a later date.

File has been noted and is returned.

DGD/jed/3.

Incls. 7.

Dorrell G. Dickerson

Dorrell G. Dickerson, M.D. F.A.C.S.

(Libelant's Exhibit No. 14)

CALIFORNIA CLINICAL LABORATORY

805 California Medical Building

1401 South Hope Street

Phone PRospect 5695

Los Angeles, Calif.

Complete Blood Count

for Mr. Robert C. Johnson

at the request of Dorrell G. Dickerson, M.D.

January 24, 1945

Percentage of Hemoglobin.....	91
Hemoglobin Index	0.9
Number of Erythrocytes.....	4,910,000
Number of Leucocytes.....	9,020

Differential Count of Leucocytes:

Eosinophiles	0.5%
Neutrophiles	
Juveniles	0.5%
Stabs	3 %
Segmenters	64 %
Large Lymphocytes.....	4 %
Small Lymphocytes	25 %
Monocytes	3 %

No pathological red cells seen.

H. VandeErne, M.D.

(Libelant's Exhibit No. 14)

CALIFORNIA CLINICAL LABORATORY

805 California Medical Building

1401 South Hope Street

Phone PROspect 5695

Los Angeles, Calif.

Urinalysis

for Mr. Robert C. Johnson

at the request of D. C. Dickerson, M.D.

January 24, 1945

A clear, lemon colored urine.

With a specific gravity of 1.014

Reaction: pH 6.0

No albumin, sugar, acetone or indican present.

Microscopic

Few calcium oxalate crystals.

Some amorphous phosphates.

Otherwise negative.

H. VandeErne, M.D.

(Libelant's Exhibit No. 14)

ELECTRO-ENCEPHALOGRAPHIC STUDY

1-27-45

Name Johnson, Robert

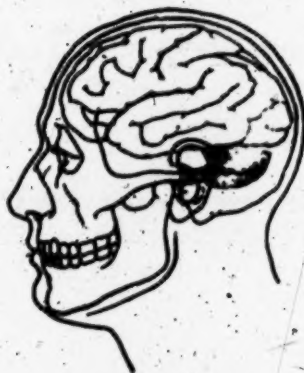
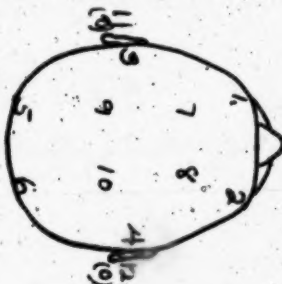
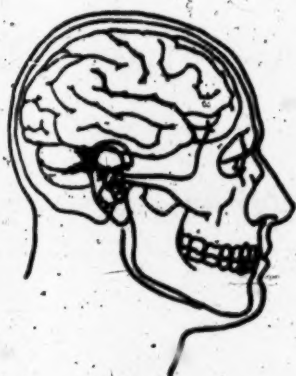
26 yrs.

This record rates 1 (1 normal - 5 abnormal)

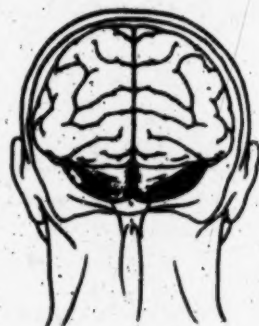
1. The patterns appear to be within normal limits.

Norman W. Frost

LOCALIZATION



Pin 16 = 0



(Libellant's Exhibit No. 14)

ELECTRO-ENCEPHALOGRAPHIC RECORD

1-27-45

No. 1534

Hospital No.

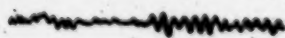
Room No.

JOHNSON, Robert 26 yrs

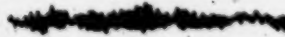
Address

by DR. JOHNSON

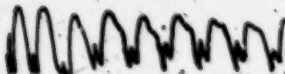
Address



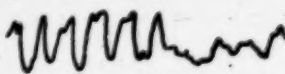
A. Normal record (showing low voltage patterns and slow waves of 0.12 per second).



B. Cramp and (20-30 per second).



C. Fast and (3 per second, with spikes).



D. Psychomotor (3 to 6 per second—smooth, sometimes irregular).



E. Tumor, etc. (1 to 3 per second).

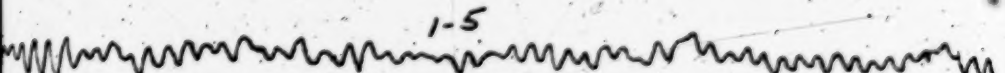
FORM 207-B NOV 9-44

DISCUSSION

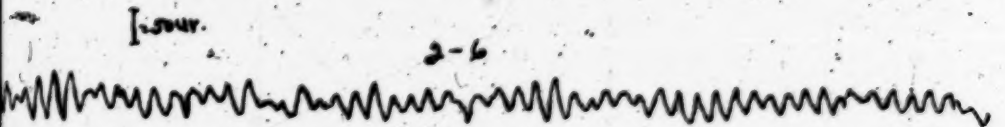
Brain wave patterns are due to chemical electrical discharges. A dysrhythmia seems to be significant—especially if there are clinical signs which go with the pattern changes. The records of children are more difficult to interpret than those of adults, although positive signs are frequently found even in infants.

A normal record and the most common dysrhythmias are shown, so that a brief comparison may be made with typical patterns from the subject of this report.

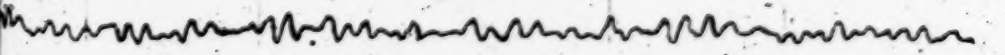
A rating between 1 and 2+ is considered "within normal limits".



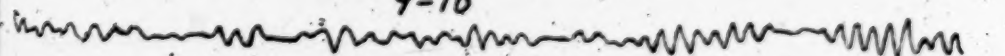
1-5



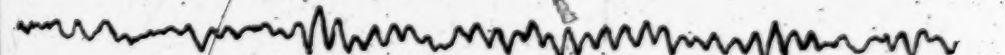
2-6



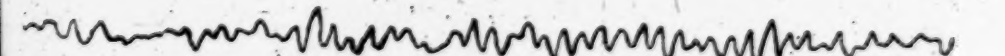
3-1



9-10



0-9



0-10

(Libelant's Exhibit No. 14)

Wybren Hiemstra, M.D.

Radiologist

Telephone

PRospect 4011

THE CALIFORNIA HOSPITAL

(Lutheran Hospital, Society of So. California)

1414 So. Hope Street,

Los Angeles

January 25, 1945

D. G. Dickerson, M.D.

1401 S. Hope St.

Los Angeles, California

Re: Johnson, Mr. Robert C.

Dear Doctor Dickerson:

Our X-ray findings are as follows:

Skull—1/23/45. Stereoscopic right and left lateral and A.P. views of the skull reveal no roentgenological evidence of fracture. The sella and posterior clinoids are normal. Two areas of calcification, measuring about two by four millimeters, are noted in the lateral views. The A.P. view indicates that they may be calcifications in the choroid plexus rather than in the pineal. No areas of destruction are noted.

Conclusions: Negative skull.

(Libelant's Exhibit No. 14)

Cervical Spine: Stereoscopic A.P. and lateral views of the cervical spine, including the odontoid, reveal no roentgenological evidence of fracture. The bodies and intervertebral spaces are normal. The cervical lordosis is within normal limits and no scoliosis is demonstrated. There are no cervical ribs.

Conclusions: Negative.

Thank you for this reference.

Very truly yours,

W. Hiemstra

W. Hiemstra, M.D.

WH:MCW

1/24/45

3:00 P.M.

Case No. 3915-H-Adm. Johnson vs. U. S. A. Respondent's Exhibit. Date May 23, 1945. No. "J" Identification. Clerk, U. S. District Court, Sou. Dist of Calif.
L. Wayne Thomas, Deputy Clerk.

Case No. 3915-H-Adm. Johnson vs. U. S. A. Libelant's Exhibit 14. Date 11/13/45. No. 14 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[LIBELANT'S EXHIBIT NO. 15]

Form 1946-T

Federal Security Agency

Public Health Service

(June 1941)

ABSTRACT FROM CLINICAL RECORD

Name Robert Johnson Occupation Able Seaman

Age 26 years, Last Vessel S.S. Mission Soledad

Furnished hospital care from July 1, 1944, to July 5, 1944

Furnished outpatient care ~~from~~ on July 1, 1944, ~~to~~ and
on July 6, 1944

Diagnosis Contusion and laceration of the occipital
region

Probable cerebral concussion, mild

Condition of Patient Upon Admission

History obtained from the patient of being struck on the back of the head by a falling block weighing 25 lb. from a distance of four or five feet. He was not unconscious but sustained a laceration on the back of the head. There was no bleeding from the ears or nose.

Complaint: "Dizzy and have a headache."

Examination: Sutured laceration 4 cm. in length of the occipital region of the scalp. Slight stiffness of the neck. Moderately lethargic, but this possibly due to sedation which the patient had allegedly taken. Examination of the patient revealed no neurological lesions. X-ray of the skull and cervical spine were negative. In need of hospitalization.

(Libelant's Exhibit No. 15)

Condition of Patient on July 5, 1944

(Date)

With bed rest there has been marked improvement of the condition, but there is still vertigo on attempt to move the head rapidly.

Released from the hospital.

Not fit for duty for an indefinite period.

Fit for travel.

Sutures removed on July 6. Wound clean.

[Impression, Service Seal]

[Seal]

R. P. Grimm

R. P. Grimm

P.A. Surgeon, United States Public Health
Service, in Charge

For Medical Officer in Charge

USPHS Relief Station

(Station)

208 Federal Bldg., Honolulu 7, T. H.

(Address)

Case No. 3915-H-Adm. Johnson vs. U. S. A. Libelant's Exhibit. Date May 23, 1945. No. 1 Identification. Clerk, U. S. District Court, Sou. Dist. of Calif. L. Wayne Thomas, Deputy Clerk.

(Libelant's Exhibit No. 15)

Form 1946-T

Federal Security Agency

Public Health Service

(June 1941)

ABSTRACT FROM CLINICAL RECORD

Name Robert C. Johnson Occupation m/s

Age 26 years, Last Vessel S.S. Mission Soledad

Furnished hospital care from July 1, 1944, to July 5, 1944

Furnished outpatient care from July 6, 1944, to Continuing, 19

Diagnosis Contusion and laceration of the head.


Condition of Patient Upon Admission

Sutured laceration on the occipital region.

Vertigo, nausea and stiffness of the neck.

Headache on movement, lethargy.

Hospitalized. Not fit for duty.



(Libelant's Exhibit No. 15)

Condition of Patient on July 5, 1944

(Date)

Marked improvement of all symptoms.

Released from the hospital.

Not fit for duty for an indefinite period.

Fit for travel.

[Impression, Service Seal]

[Seal]

RPG

R. P. Grimm

R. P. GRIMM,

P.A. Surgeon, United States Public Health Service,
in Charge.

For Medical Officer in Charge.

USPHS Relief Station

(Station)

Honolulu, T.H.

(Address)

Case No. 3915-H-Adm. Johnson vs. U. S. A. Libelant's
Exhibit. Date May 23, 1945. No. 6 Identification. Clerk,
U. S. District Court, Sou. Dist of Calif. L. Wayne
Thomas, Deputy Clerk.

Case No. 3915. Johnson vs. U. S. A. Libelant's Ex-
hibit 15. Date 11/13/45. No. 15 in Evidence. Clerk,
U. S. District Court, Sou. Dist. of Calif. P. D. Hooser,
Deputy Clerk.

[LIBELANT'S EXHIBIT NO. 16]

Treasury Department
U. S. P. H. S.—Form 1918

March, 1925

No.

CERTIFICATE OF DISCHARGE

From U. S. Public Health Service
(Marine hospital or relief station)

At 406 Federal Bldg., Los Angeles, Calif.

8/23, 1944

This is to certify that Johnson, Robert
(Surname) (First) (Middle)

was treated in the as a

(Hospital or dispensary) (Hospital or out)

patient from, 19.... to

(Date of admission) (Date of discharge)

19.....

Class of beneficiary M-S-

Condition on discharge Improved

Reason for discharge No further hosp. nec.

Certified service on last vessel.....

Name of vessel.....

Remarks: Discharged to Rest. Name for case—Post
Concuss. Syndrome.

(Libelant's Exhibit No. 16)

Description

Nativity

Date of birth.....

Color

Complexion

Height

Eyes

Hair

C. O. Shapiro

Surgeon (R)

Robert C. Johnson

(Signature of patient)

Note.—Retain copy for station files.

Case No. 3915-H-Adm. Johnson vs. U. S. A. Libelant's Exhibit. Date May 23, 1945. No. 2 Identification. Clerk, U. S. District Court, Sou. Dist. of Calif. L. Wayne Thomas, Deputy Clerk.

Case No. 3915. Johnson vs. U. S. A. Libelant's Exhibit 16. Date 11/13/45. No. 16 in Evidence. Clerk, U. S. District Court, Sou. Dist of Calif. P. D. Hooser, Deputy Clerk.

[LIBELANT'S EXHIBIT NO. 17]

Form 1946-T

Federal Security Agency

Public Health Service

ABSTRACT FROM CLINICAL RECORD

Name Robert C. Johnson

Occupation Merchant Seaman

Age 26 years Last Vessel USS Mission Soledad

Furnished hospital care from 8-17-, 1944, to 8-23-, 1944

Furnished outpatient care from 8-17-, 1944, to 8-31, 1944

Diagnosis Laceration scalp, healed
Post concussion syndrome

Condition of Patient Upon Admission

Chief Complaint: Headaches and dizziness.

History: Relates he was hit in the left posterior parietal region high up by a guy block on 6-30-44. He received a laceration of the scalp which he states required five sutures to close. He was not knocked unconscious but was dazed and dizzy following the injury. He was hospitalized at the Queens Hospital in Honolulu for about a week and brought back to the States as a passenger.

(Libelant's Exhibit No. 17)

Examination: Recently healed scar in the left posterior parietal region. Gait is unsteady and walks on a wide base, otherwise the general physical and neurological examination is negative.

X-ray of skull showed no evidence of fracture.

Electro-encephalogram was normal.

Diagnosis: Laceration of scalp, healed.

Post concussion syndrome.

[Impression, Service Seal]

Waldemar J. A. Wickman

Surgeon, United States Public Health Service,
in Charge.

Waldemar J. A. Wickman, Surgeon
406 Federal Bldg., Los Angeles, Calif.
(Station)

January 26, 1945

(Address)

Case No. 3915-H-Adm. Johnson vs. U. S. A. Libelant's Exhibit. Date May 23, 1945. No. 4 Identification, Clerk, U. S. District Court, Sou. Dist. of Calif. L. Wayne Thomas, Deputy Clerk.

Case No. 3915. Johnson vs. U. S. A. Libelant's Exhibit 17. Date 11/13/45. No. 17 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[LIBELANT'S EXHIBIT NO. 18]

Medical Section, Service Division, RMO
WAR SHIPPING ADMINISTRATION
107 Washington Street
New York 6, N. Y.

January 26, 1945

MEDICAL REPORT ON ROBERT C. JOHNSON

This 26 year old ablebodied seaman was admitted to Pacific Palisades Rest Center on 8/23/44 and discharged 10/1/44.

Chief Complaint: Head injury July 1st.

Onset of Present Illness: On July 1 while at dock in Pearl Harbor a block struck him on back of the head. He was dazed but not unconscious. Bled a good deal from the laceration and was taken to a first aid station for sutures. X-ray taken the next day for fracture—negative. Was in Queens Hospital, Honolulu for a week. Then stayed at Seamen's Institute for two weeks. Complained of headache more or less constant, ever since the injury.

Past History: Ordinary childhood diseases. Flu at 19; again at 24. Mumps as a boy.

Course at Rest Center: During his stay, patient complained a good deal of headaches, dizziness, very anxious, cold and wet hands and feet. He was much upset when another patient developed a manic excitement and had to be sent to a psychiatric hospital. He then revealed the fear that his own head injury might lead to a similar loss

(Libelant's Exhibit No. 18)

of control. It was very difficult to reassure the patient who was especially apt to show increased anxiety after visits from his father who communicated his own anxiety and often admonished the patient not to show how he felt. Father in his anxiety was apt to be very critical and expressed the wish to collect greater damages. Patient was given a thorough neurological check-up by the USPHS. Neurological consultation and an electroencephalogram were normal.

Diagnosis: Post concussion syndrome.

Recommendation: Unfit for sea duty for three months.

To continue treatment at San Diego USPHS. Prognosis: Good.

The above abstract has been prepared from confidential records on file at the Merchant Marine Medical Center, 107 Washington St. NY 6, NY and is released in the interests of the War Shipping Administration, USA.

V. Gerard Ryan · R

Surgeon (R) V. Gerard Ryan

Acting Deputy Medical Director

Case No. 3915-H-Adm. Johnson vs. U. S. A. Libelant's Exhibit. Date May 23, 1945. No. 8 Identification. Clerk, U. S. District Court, Sou. Dist. of Calif. L. Wayne Thomas, Deputy Clerk.

Case No. 3915. Johnson vs. U. S. A. Libelant's Exhibit 18. Date 11/13/45. No. 18 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[LIBELANT'S EXHIBIT NO. 19]

[Crest] TREASURY DEPARTMENT
 Public Health Service

ABSTRACT FROM CLINICAL RECORD

Name Robert Johnson

Occupation Merchant Seaman

Age 26 years Last Vessel S.S. Mission Soledad

Furnished hospital care from - - , 19 , to - - , 19

Furnished outpatient care from October 4, 1944, to Oc-
tober 5, 1944

Diagnosis (Tentative) Basal injury brain with possible
increased intracranial pressure.

Condition of Patient Upon Admission

Slight ankle clonus on both sides. Suggestive Babinski
on left side. Knee jerks present on both sides. Positive
Romberg. Pupils equal in size, react to light and ac-
commodation. Cannot wrinkle right side of forehead.
No disturbance of function of muscles of eye. Bending
head forward causes severe dizziness. Walks very un-
steadily and has to be watched. Tends to keep eyes closed
because light interferes. Advised hospital care.

(Libelant's Exhibit No. 19)

Condition of Patient on October 5, 1945.

(Date)

Same.

(Impression Service Seal)

R. M. Grimm

Med. Dir., ~~Surgeon~~, U.S.P.H.S. H.L.
In Charge

USPHS Relief Station,
(Station)

208 New P. O. Bldg.,
San Diego 1, Calif..
(Address)

Case No. 3915-H-Adm. Johnson vs. U.S.A. Libelant's Exhibit. Date May 23, 1945. No. 3 Identification, Clerk, U. S. District Court, Sou. Dist of Calif. L. Wayne Thomas, Deputy Clerk.

Case No. 3915. Johnson vs. U.S.A. Libelant's Exhibit 19. Date 11/13/45. No. 19 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[LIBELANT'S EXHIBIT NO. 20]

Form 1946-T

Federal Security Agency

Public Health Service

ABSTRACT FROM CLINICAL RECORD

Name Johnson, Robert Occupation MS

Age 26 years, Last Vessel S/S Mission Soledad

furnished hospital care from xxx, 19, to xxx, 19

Furnished outpatient care from November 30, 1944, to
xxx, 19

Under observation for: Psychosis, post-traumatic per-
sonality disorders

Diagnosis Psychosis, with psychopathic personality
(Neurathenia)

Psychoneurosis; hysteria, hyperkinetic

Condition of Patient Upon Admission

Patient states he has constant headaches since he was injured aboard ship on June 30, 1944, by falling 5' wooden block, which, apparently, slipped from hands of fellow-seaman, and dropped about 4 feet, hitting patient's head. He was treated at Queen's Hospital, Honolulu, T. H., for contusion and laceration of scalp, occipital region, for about one week, and repatriated to Los Angeles, where he entered a hospital for observation for one

(Libelant's Exhibit No. 20)

week. Following this he went to a Rest Center, for 6 weeks, and was discharged on October 1, 1944, MBRC. He was seen at the Out-Patient Office in San Diego on Oct. 5, 1944 and states he was given treatments for headaches. He visited his father in California and then came to his old home in Sabinal, Texas, where he stayed on a ranch with relatives. While there he was seen by a private physician and given treatments.

Condition of Patient on Nov. 30, 1944.

(Date)

Physical examination revealed a medium height white male about 26 years of age, weighing about 128 pounds. Urine was negative. Blood pressure 135/85. Pulse 120 p.m., slightly irregular. There is a small healed scalp scar, occipital region. He is "nervous"; fine tremors of hands and fingers. Musculature poor. Gait slow and cautious. Pupils slightly dilated; equal. Vision 20/20 p.u. Slight pain and "catch" of neck at times.

Patient was advised to enter the Marine Hospital in Galveston for observation, but refused to do so. He was then advised of opportunity to enter near-by Rest Center at Kittiwake and also refused to do this. He was then given medication and advised to return to his former home at Sabinal, Texas and live and work on ranch.

(Libelant's Exhibit No. 20)

[Impression, Service Seal]

[Seal]

A. T. Morrison

A. T. Morrison, Senior Surgeon
Executive Officer

.....
Surgeon, United States Public Health Service,
in Charge.

U. S. Marine Hospital
(Station)

Galveston, Texas

February 16, 1945

(Address)

Case No. 3915-H-Adm. Johnson vs. U. S. A. Libelant's
Exhibit. Date May 23, 1945. No. 7 Identification. Clerk,
U. S. District Court, Sou. Dist. of Calif. L. Wayne
Thomas, Deputy Clerk.

Case No. 3915. Johnson vs. U. S. A. Libelant's Ex-
hibit 20. Date 11/13/45. No. 20 in Evidence. Clerk,
U. S. District Court, Sou. Dist. of Calif. P. D. Hooser,
Deputy Clerk.

[LIBELANT'S EXHIBIT NO. 21]

[Crest] TREASURY DEPARTMENT

Public Health Service

ABSTRACT FROM CLINICAL RECORD

Name Robert C. Johnson

Occupation Merchant Seaman

Age 26 years, Last Vessel S.S. Mission Soledad

Furnished hospital care from --, 19 --, to --, 19 --

Furnished outpatient care from January 20, 1945, to
January 20, 1945Diagnosis Intracranial injury—basal. Possible increased
intracranial pressure.

'Condition of Patient Upon Admission'

Paralysis of right frontal muscle of forehead. Photo-
phobia. Very sensitive to sounds and loud noises. Eyes—
not abnormal. Evidence of very great nervousness.
Flexion of head on neck is painful. Unsteady gait,
Positive Romberg. Suggestive bilateral ankle clonus.

(Libelant's Exhibit No. 21)

Condition of Patient on January 20, 1945
(Date)

Same.

(Impression Service Seal)

[Seal]

R. M. Grimm

Med. Dir., ~~Surgeon~~, U.S.P.H.S. H.L.
In Charge

USPHS Relief Station,
(Station)

208 New P. O. Building,
San Diego 1, California.
(Address)

Case No. 3915-H-Adm. Johnson vs. U. S. A. Libelant's
Exhibit. Date May 23, 1945. No. 5 Identification. Clerk,
U. S. District Court, Sou. Dist. of Calif. L. Wayne
Thomas, Deputy Clerk.

Case No. 3915: Johnson vs. U. S. A. Libelant's Ex-
hibit 21. Date 11/13/45. No. 21 in Evidence. Clerk,
U. S. District Court, Sou. Dist. of Calif. P. D. Hooser,
Deputy Clerk.

[LIBELANT'S EXHIBIT NO. 22]

Copy

Copy

WAR SHIPPING ADMINISTRATION

Washington

Operations Regulation No. 108

Pertaining to All Vessels Owned by or Under Bareboat
Charter to War Shipping Administration

Subject: Amounts to Be Paid as Maintenance Under the
Doctrine of Wages, Maintenance and Cure.

Effective from August 1, 1945 maintenance shall be
paid to vessel personnel during periods of disability, even
though the injury or illness causing disability may have
occurred prior to August 1, 1945, at the following rates:

Unlicensed Seamen—\$3.50 per day.

Licensed Officers Including Staff Officers and Radio
Operators shall be paid maintenance of not less than \$4.00
or more than \$6.50 per day but the customary differential
paid by General Agents, depending upon the rating of the
individual, shall be continued in effect.

(Sgd) G. H. HEMBOLD

G. H. Hembold

Assistant Deputy Administrator for
Ship Operations

July 18, 1945

Copy

Copy

Case No. 3915. Johnson vs. U. S. A. Libelant's Ex-
hibit 22. Date 11/14/45. No. 22 in Evidence. Clerk,
U. S. District Court, Sou. Dist. of Calif. P. D. Hooser,
Deputy Clerk.

vs. Robert C. Johnson

259

[LIBELANT'S EXHIBIT NO. 23]

Date 10-13-44

M Robt. Johnson

No., Medicine

Reg No.	Clerk	Account Forward
B	158154	75
B	158155	75
		—
		1 50

CENTRAL PHARMACY

Sabinal, Texas

Pd 10-13-44

J. R. M.

Case No. 3915. Johnson vs. U. S. A. Libelant's Exhibit 23. Date 11/14/45. No. 23 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[LIBELANT'S EXHIBIT NO. 24]

PACIFIC TANKERS INC.

Seaman's Wage Account

ESTIMATED WAGE ACCOUNT

S/S MISSION SOLEDAD VOY. 3-7 PORT _____ DATE _____
 NAME R. C. Johnson RATING A.B. SOCIAL SECURITY NO. 527-09-1014
 ADDRESS _____ DEPT _____ NUMBER ON ARTICLES _____

Earnings:	Date	Date	Mos.	Days	Rate	Total
1. Wages	From July 2, 1944	To Nov. 14, 1944	4	14	\$107.50 Per Mo.	\$ 480 17

2. Voy. Bonus

"	"	42	100%	" "	150 50
"	"	35	66 2/3%	" "	93 33
"	"	16	25%	" "	16 00
"	"	13	33 1/3%	" "	17 34

3. Area Bonus

"	"	42	5 00 Per day		210 00
---	---	----	--------------	--	--------

4. Vessel Attack Bonus

Date	Location
------	----------

5. Overtime

Approx.	
250 Hours @ \$.85 Per Hour	212 50
Approx.	
6 " " 1.10 " "	6 60

6. Total Wages, Bonus and Overtime (Lines 1 to 5)..... \$1 186 44

Deductions

* * * * *

(Libelant's Exhibit No. 24)

8. Withholding Tax (Line 6) \$1186.44
 Less: Exemptions..134 Days @ 1.70 \$ 227.80 \$958.64 @ 20% \$191.73

9. Social Sec. Tax (Line 6) \$1186.44
 Plus: Value of Mo. 134 Days @ 1.20 \$ 160.80 \$1347.24 @ 1% 13.47
 Room & Board

* * * * *

14. Total Deductions (Lines 7 to 13) \$ 205.20
 15. Net Wages Due (Line 6 minus line 14) \$ 981.24
 16. Add Subsistence and Lodging Ashore and Travel Allowance \$ 9.25
 17. Balance Due (Total Line 15 plus Line 16)..... \$ 990.49

Received Payment in Full

I certify that this payroll voucher is true and correct; that the person named hereon was employed and has performed the services for the period as stated above; and that the person whose name appears on this payroll voucher is entitled to the amount of pay stated above.

Master

Payee

Paid in full before me in accordance with the above.

Shipping Commissioner

Number.....

[Written]: Anticipated

Case No. 3915-H-Adm. Johnson vs. U. S. A. Respondent's Exhibit. Date May 23, 1945. No. "K" Identification. Clerk, U. S. District Court, Sou. Dist. of Calif. L. Wayne Thomas, Deputy Clerk.

Case No. 3915. Johnson vs. U. S. A. Libelant's Exhibit 24. Date 11/14/45. No. 24 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[LIBELANT'S EXHIBIT NO. 25]

REPORT OF ACCIDENT

Answer Every Question

~~Notice:~~ This report must be forwarded at once. The shipowner is liable for a \$300.00 fine if injuries are not reported at once.

1. Name of Vessel SS Mission Soledad Shipowner Pacific Tankers Inc. W. S. Voyage No. 5

2. Shipowner's Office Address Pacific Tankers Inc. 433 California St. San Francisco

Street No. City State

3. Name of Injured Robert C. Johnson Is he American citizen? Yes

4. Address of Injured 1430 So. 28th St. San Diego, Street No. City

Calif.
State

5. Age 25 Married Single Dependents Mother Children, age etc.

6. Capacity in which employed A. B. Wages \$107.50
(Seaman, Stevedore, etc.)
per Month
(Day or Mo.)

7. Date of Injury June 30, 1944 Where injured on ship or wharf?

(Important)

8. Port or place of injury Pearl Harbor Honolulu, T.H. Hour 8:35 A. M.....P. M.

9. Were full wages paid for day of injury? Yes

(Libelant's Exhibit No. 25)

10. Did injured leave work at once?.....Has he returned? No.

(Date)

11. Describe fully how injury occurred: Sailors were stowing the forward port side boom and the guy block was caught on a davit, one of the men cast it off and line and block fell ree striking this sailor on the back of the head—block causing a large cut in this man's scalp. Five stitches were taken in his head at the Navy Dispensary.

12. Was injury caused through any violation of rules? If so, how? No.

13. Extent of injuries: Three inch cut of considerable depth, but no concussion suffered or fracture.

(If any members lost, describe in full)

14. Probable disability: Two or three days Was party sober? Yes.

15. Doctor injured sent to Naval Dispensary. Address: Pearl Harbor, Honolulu, T.H.

16. Who arranged for doctor? 1st Mate Hospital

(Name)

17. Who was in charge of work at place of injury? Bos'n Francis Kwock

(Name and title)

18. Statement made by injured Was working under boom unbenching lines when he was suddenly hit.

19. To whom made Purser Robert E. Agnew.

(Libelant's Exhibit No. 25)

20. If a Stevedore, by whom employed.....
(Ship, or if other parties, give name)

21. If a Seaman—Port of shipment San Pedro, Calif.
Date of Shipment Mar. 25, 1944

22. When would voyage have ended.....
(Date)

Is he still aboard vessel? Yes Working now? No.

23. Was he forced to quit because of injuries? No.
Where is injured now? Aboard ship at Pearl Harbor
(City)

24. If a Passenger:
Class.....Boarded Vessel at.....Destination.....
Important

Preserve All Broken Parts of Machinery
(Over)

Witnesses (Important)

1. Names—Oral J. Dudder. Permanent Address
(Street, City and State)—17050 40th Place, Seattle,
Wash. Occupation—Quarter Master.

* * * * *

Dated at Pearl Harbor, Honolulu, T.H. on the 30th
day of June, 1944.

Report made out by R. E. Agnew
Rating Purser

Case No. 3915. Johnson vs. U. S. A. Libelant's Exhibit 25. Date 11/14/45. No. 25 Identification. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[RESPONDENT'S EXHIBIT A]

I, Robert C. Johnson, signed on the S.S. "Mission Soledad" as a seaman on March 25, 1944, at San Pedro, California, for a foreign voyage. I reside at 1430 So. 28th Street, San Diego, California.

On June 30, 1944, while the vessel was at Pearl Harbor, Honolulu, at about 8:35 A. M. we were stowing the forward port boom, and while we were doing this I was struck in the head by an object which I was afterwards told by others was a block which I understood was dropped by one of the seamen who was standing above me on one of the cross beams.

I was hospitalized at Queen's Hospital from July 1 to July 6, and then remained ashore until July 22, during which time my expenses were paid, and I boarded the S.S. "Philippa" on that date and sailed the same day, arriving in San Francisco on July 30.

When I paid off the S.S. "Mission Soledad" I received all of my straight wages, overtime and bonuses up to and including July 1, 1944.

I am now fully recovered from my injury.

I have read the foregoing statement, and it is true and correct in all respects.

Robert C. Johnson

Robert C. Johnson

(Respondent's Exhibit A)

Witness:

Jeanne Slotte

Dated: July 31, 1944

San Francisco, California

Case No. 3915-H-Adm. Johnson vs. U. S. A. Respondent's Exhibit. Date Jan. 3, 1945. No. "E" Identification. Clerk, U. S. District Court, Sou. Dist. of Calif. L. Wayne Thomas, Deputy Clerk.

Case No. 3915. Johnson vs. U. S. A. Respondent's Exhibit A. Date 11/13/45. No. A in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[RESPONDENT'S EXHIBIT B]

Do Not Sign This Unless You Fully Understand Its
Contents—This Is a

FULL RELEASE OF ALL CLAIMS AND
DEMANDS

To all to whom these presents shall come or may concern, greeting:

Know ye, that I, Robert C. Johnson, the undersigned, for and in consideration of a net sum of Two Hundred Forty-Seven and 10/100 (\$247.10) Dollars, the receipt whereof is hereby acknowledged, have remised, released and forever discharged and by these presents do for myself, my heirs, executors, administrators, and assigns, remise, release and forever discharge Pacific Tankers, Inc., and United States of America, acting by and through the Administrator, War Shipping Administration, and its General Agents and Agents under Service Agreements, Berth Agents and Sub-Agents acting on their behalf, and Owners and in particular the vessel S.S. "Mission Soledad," its engines, boilers, tackle, apparel and furniture, its owners, operators, charterers, lessees, managers, officers, and crew, and each of them and all persons, firms and corporations having any interest in or to said vessel, of and from any and all claims and demands of any and every kind, name, nature, or description, and from Any and All Damages, injuries, actions or causes of action;

(Respondent's Exhibit B)

either at law, in equity, or in admiralty, which I now have or in the future may have against it or them or any of them, including any and all claims or demands for wages, maintenance, cure, compensation, reimbursement, transportation, sustenance, or expense under any law or duty imposed by any law of the United States of America, or any State thereof, or for any other account, whether or not the same be now existent or known to me or whether it later develops or becomes existent or known to me in the future, by reason of or arising out of personal injuries sustained by me on or about the 30th day of June, 1944, while in the employ of said vessel and/or its owners and/or its agents at Pearl Harbor, T. H., when the undersigned sustained injuries to head, and other severe bodily injuries.

The undersigned does hereby affirm and acknowledge that he has read over the foregoing Release and has had the same fully explained to him and fully understands and appreciates the foregoing words and terms and their effect, and being entirely satisfied with the settlement herein made, has affixed his signature hereto voluntarily and of his own free will and accord.

Robert C. Johnson
Full Release of All Claims

Witness by:

Jeanne Slotte

(Respondent's Exhibit B)

Do you understand that signing this paper settles and ends Every claim for Damages, as well as for compensation, maintenance, cure and wages? Answer, Yes.

(Claimant may write here either "yes" or "no," according to his understanding.)

Robert C. Johnson

Full Release of All Claims

Dated July 31, 1944.

Case No. 3915-H-Adm. Johnson vs. U. S. A. Respondent's Exhibit. Date Jan. 3, 1945. No. "C" Identification. Clerk, U. S. District Court, Sou. Dist. of Calif. L. Wayne Thomas, Deputy Clerk.

Case No. 3915. Johnson vs. U. S. A. Respondent's Exhibit B. Date 11/13/45. No. B in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. W. D. Hooser, Deputy Clerk.

United States of America

[RESPONDENT'S EXHIBIT C]

PACIFIC TANKERS INC.

433 California Street

San Francisco 4, California

To

Check No. 8136

Head Office

American Trust Company

11-24

11-24 San Francisco, California 11-24

Date July 31, 1944

Pay The sum of \$247. and 10 cts \$247.10
to the In Full Settlement of Account as Noted Below.
Order If Not Correct Return With Statement of
of Difference

Robert C. Johnson

Pacific Tankers Inc.

General Agent, Special Account

Arthur A. Layne

Authorized Signature

O. K. Howell

Authorized Counter Signature

(Respondent's Exhibit C)

In full satisfaction of all claim and demands against the SS Mission Soledad for injuries sustained by me on or about the 30th day of June, 1944 as per release of even date.

Robert C. Johnson

[Stamped]: Bank of America, San Diego, and Federal Reserve Bank of San Francisco.

Case No. 3915-H-Adm. Johnson vs. U. S. A. Respondent's Exhibit. Date Jan. 3, 1945. No. "D" Identification. Clerk, U. S. District Court, Sou. Dist. of Calif. L. Wayne, Thomas, Deputy Clerk.

Case No. 3915. Johnson vs. U. S. A. Respondent's Exhibit C. Date 11/13/45. No. C in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[RESPONDENT'S EXHIBIT D]

PACIFIC TANKERS INC.

Séaman's Wage Account

S/S Mission Soledad VOY. 3 PORT San Pedro, Calif. DATE Mar. 25, 1944

SOCIAL

NAME R. C. Johnson 3-0. RATING A. B. SECURITY NO. 527 09 1014

ADDRESS 1430 So. 28th St. San Diego Calif.

DEPT. Deck

NUMBER ON ARTICLES #17

Earnings:	Date	Date	Mos. Days	Rate	Total
1. Wages	From Mar. 25, 1944	To July 1, 1944	3 7	\$107.50 Per Mo.	\$ 347 58

2. Voy. Bonus

"	Mar. 28, 1944	" Mar. 31, 1944	4	100%	" "	14 33
"	April 1, 1944	" May 3, 1944	33	66 2/3%	" "	78 87
"	May 4, 1944	" May 13, 1944	10	25%	" "	9 00
"	May 25, 1944	" May 27, 1944	3	66 2/3%	" "	7 17
"	May 29, 1944	" May 31, 1944	3	66 2/3%	" "	7 17

3. Area Bonus

"	June 1, 1944	" June 8, 1944	8	25%	Per Day	7 20
"	June 9, 1944	" June 15, 1944	7	66 2/3%	" "	16 73

* * * * *

5. Overtime

304 Hours @ \$.854 Per Hour 1.00 For handling line 259 40

6. Total Wages, Bonus and Overtime. (Lines 1 to 5) \$747 45

* * * * *

8. Total of Lines 6 and 7 \$747 45

Deductions

9. Withholding Tax (Line 6) \$747.45

Less: Exemptions.....97 Days @ 1.70 \$164.90 \$582.55 @ 20% \$116 51

(Respondent's Exhibit D)

10. Social Sec. Tax (Line 8)	\$747.45	
Plus: Value Room 97 Days @ 1.20	\$116.40	\$863.85 @ 01% 8 64
& Board		
* * *		
12. Advances		140 31
13. Slops		19 69
* * *		
15.		285 15
16. Balance Due (Total Lines 1 to 8 Less Lines 9 to 15)		\$462 30

Received Payment in Full
Castle & Cooke, Ltd., Agent
per [Illegible]

Payee

Robert C. Johnson

I certify that this payroll voucher is true and correct; that the person named hereon was employed and has performed the services for the period as stated above; and that the person whose name appears on this payroll voucher is entitled to the amount of pay stated above.

George [Illegible], Master.

Paid in full before me in accordance with the above.

Shipping Commissioner

Number

Case No. 3915-H-Civ. Johnson vs. U. S. A. Respondent's Exhibit. Date May 23, 1945. No. "L" Identification. Clerk, U. S. District Court, Sou. Dist of Calif. L. Wayne Thomas, Deputy Clerk.

Case No. 3915. Johnson vs. U. S. A. Respondent's Exhibit D. Date 11/13/45. No. D in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[RESPONDENT'S EXHIBIT E]

Debit SS MISSION SOLEDAD

Honolulu, Hawaii, July 15, 1944

Received from Castle & Cooke, Limited, Twenty-Two and No/100———Dollars, Subsistence—14/7 wks. at \$14.00 per wk. (July 5, 1944 to July 15, 1944 incl.) A.B. ex the SS Mission Soledad, injured July 1, 1944.

\$22.00

Robert C. Johnson Robert C. Johnson

Item No. 15

Voucher No.....

Unit Voy. G. L. Sub.

Castle & Cooke, Limited

Cash Voucher

C&C No. Other Account

2607. — 4305-242

Approved D. McBryde

D. McBryde

(Checked C-2)

Paid 1944 Jul 18 PM 12 18 Castle & Cooke, Ltd.

..... Cashier.

"I certify that the above bill is correct and just; that payment therefor has not been received, that all statutory requirements as to American production and labor standards, and all conditions of purchase applicable to the tran-

(Respondent's Exhibit E)

actions have been complied with and that State and local sales taxes are not included in the [illegible]"

CASTLE & COOKE, LIMITED

By R. C. Long

Accountant

Case No. 3915-H-Civ. Johnson vs. U. S. A. Respondent's Exhibit. Date Jan. 3, 1945. No. "F" Identification. Clerk, U. S. District Court, Sou. Dist. of Calif. L. Wayne Thomas, Deputy Clerk.

Debit S.S. MISSION SOLEDAD 6/15/44

Honolulu, Hawaii, July 21, 1944

Received from Castle & Cooke, Limited, Fourteen and No/100—Dollars, Subsistence—1 week (July 16, 1944 to July 22, 1944, inclusive) A.B. ex S.S. Mission Soledad, injured July 1, 1944.

\$14.00

Robert C. Johnson · Robert C. Johnson

Item No. 16

Voucher No.....

Unit Voy. G. L. Sub.

Castle & Cooke, Limited

Cash Voucher

C&C No. Other Account

2718

—

4305-242

(Respondent's Exhibit E)

Approved D. McBryde

D. McBryde

(Checked C-2)

Paid 1944 Jul 25 AM 3 22 Castle & Cooke, Ltd.

..... Cashier.

"I certify that the above bill is correct and just; that payment therefor has been received, that all statutory requirements as to American production and labor standards, and all conditions of purchase applicable to the transactions have been complied with and that State and local sales taxes are not included in the [illegible]"

CASTLE & COOKE, LIMITED

By R. C. Long

Case No. 3915-H-Civ. Johnson vs. U. S. A. Respondent's Exhibit. Date Jan. 3, 1945. No. "G" Identification. Clerk, U. S. District Court, Sou. Dist. of Calif. L. Wayne Thomas, Deputy Clerk.

Case No. 3915. Johnson vs. U. S. A. Respondent's Exhibit E. Date 11/14/45. No. E in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[RESPONDENT'S EXHIBIT F]

PACIFIC TANKERS INC.

Seaman's Wage Account

S/S Mission Soledad VOY. PORT San Francisco DATE July 30, 1944

SOCIAL

NAME Robert C. Johnson RATING A.B. SECURITY NO. 527-09-1014

NUMBER ON

ADDRESS 1430 So. 28th San Diego, Calif. DEPT Deck ARTICLES

Earnings: Date Date Mos. Days Rate Total

1. Wages.

From	To	\$	Per Mo.	\$
"	"	"	"	"

2. Voy. Bonus

" July 22	" July 26	— 5	66 2/3%	" "	13 33
" July 27	" July 30	— 4	25%	" "	4 00
" Repatriation Bonus				" "	
" Insurance				" "	

* * * * *

6. Total Wages, Bonus and Overtime (Lines 1 to 5)..... \$ 17 33

* * * * *

8. Total of Lines 6 and 7..... \$ 17 33

Deductions

9. Withholding Tax (Line 6)	\$17.33
Less: Exemptions..... 9 Days @ 1.70	\$15.30
	\$2.03 @ 20% \$.41
10. Social Sec. Tax (Line 8)	\$17.33
Plus: Value Room..... Days @.....	\$17.33 @ 1% 17
& Board	

* * * * *

(Respondent's Exhibit F)

15.

58

16. Balance Due (Total Lines 1 to 8 Less Lines 9 to 15)..... \$ 1675

Received Payment in Full

Robert C. Johnson

Payee

I certify that this payroll voucher is true and correct; that the person named hereon was employed and has performed the services for the period as stated above; and that the person whose name appears on this payroll voucher is entitled to the amount of pay stated above.

Master

Paid in full before me in accordance with the above.

Shipping Commissioner.

Number.....

[Stamped]: Paid Jul. 31, 1944. Pacific Tankers Inc., General Agent, Special Account. By M 8187.

Case No. 3915-H-Civ. Johnson vs. U. S. A. Respondent's Exhibit. Date Jan. 3, 1945. No. "H" Identification. Clerk, U. S. District Court, Sou. Dist. of Calif. L. Wayne Thomas, Deputy Clerk.

Case No. 3915. Johnson vs. U. S. A. Respondent's Exhibit F. Date 11/14/45. No. F in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

171M

CERTIFICATES

Or Endorsements Made by Shipping Commissioners and Consuls

I HEREBY CERTIFY that the entries in the Discharge Books of seamen included in these articles agree with the applicable entries herein, or Certificates of Discharge have been issued in accordance therewith.

U. S. Shipping Commissioner

CITIZENSHIP REQUIREMENTS (crew exclusive of licensed officers)

	STANDARD PASSENGER VESSELS	STANDARD CARGO VESSELS	NONSTANDARD VESSELS
	65 percent shall be citizens of United States, other native-born or naturalized. Legally admitted aliens may comprise other 35 percent but may be employed in Steward's Department only.	On and after Sept. 27, 1925, 100 percent citizens of United States, either native-born or naturalized.	On and after Dec. 31, 1925, 75 percent citizens of United States, either native-born or naturalized.
	Number	Number	Number
Native-born		40	
Naturalized citizens	2 -	2	
First papers			
Admissible aliens		1	
Percentage (American citizens)		93	

I HEREBY CERTIFY that the above statement as to the citizenship of the crew signed on these articles is true and correct.

[Signature]
Shipping Commissioner

ATTENTION OF MASTERS ESPECIALLY INVITED TO THE FOLLOWING REQUIREMENTS OF LAW

	FOREIGN	NEARBY	COASTWISE	
	53			Shipped.
				Reshipped.
	53			Total
				Failed to join.
	Deck	Engine	Steward	Total
Officers				
United States (native)	3	5		8
United States (naturalized)				
Men				
United States (native)	15	17	9	41 41
United States (naturalized)				
Austrian				
British				
Chinese				
Danish				
Dutch				
Filipino				
French				
German				
Italian				
Norwegian				
Portuguese				
Russian				
Spanish				
Swedish				
Central American				
South American				
Others	1	2	2	5
Total	20	22	11	53 53

171M

NCG 785-A
(April 1942)

Triplicate
UNITED STATES COAST GUARD
SHIPPING ARTICLES

vs. Robert C. Johnson

279

[RESPONDENT'S EXHIBIT G]

(R. S. 4612, as amended—U. S. C., title 46, sec. 713)

Notice is hereby given that section 4519 of the U. S. Revised Statutes (U. S. C., title 46, sec. 577) makes it obligatory on the part of the master of a merchant vessel of the United States, at the commencement of every voyage or engagement, to cause a legible copy of the agreement (forecastle card), omitting signatures, to be placed or posted up in such part of the vessel as to be accessible to the crew, under a penalty not exceeding ONE HUNDRED DOLLARS.

ARTICLES OF AGREEMENT BETWEEN MASTER AND SEAMEN IN THE MERCHANT SERVICE OF THE UNITED STATES

Required by Act of Congress, Title LI, Revised Statutes of the United States (U. S. C., title 46, chap. 18)

NAME OF SHIP	OFFICIAL NO.	PORT OF REGISTRY	DATE OF REGISTER	REGISTERED TONNAGE		VOYAGE NO.
				Gross	Net	
<i>S/S Mission Soledad</i>	<i>244545</i>	<i>San Francisco, Calif.</i>	<i>1-16-44</i>	<i>10,467</i>	<i>7337</i>	<i>3</i>

OPERATING COMPANY ON THE VOYAGE

NUMBER OF SEAMEN AND
APPRENTICES FOR WHICH
ACCOMMODATION IS CERTIFIED

CLASS OF SHIP

Name <i>Nor Ship Administration</i>	Address (State number of house, street and town.) <i>433 California St., San Francisco, Calif.</i>	57	<i>Steam-Tanker</i>
<i>Pacific Tankers, Inc.</i>	<i>Office of the U. S. SHIPPING COMMISSIONER FOR THE PORT OF Los Angeles, Cal.,</i>		<i>Nov 15, 1944.</i>
<i>General Agents</i>			

IT IS AGREED between the Master and seamen, or mariners, of the

of which

is at present Master, or whoever shall go for Master, now bound from the Port of

Los Angeles, California

to

A point in the Pacific Ocean to the westward of Los Angeles, California, and thence to such ports and places in any part of the world as the Master may direct, or as may be ordered or directed by the U. S. Government, or any Department, Commission or agency thereof, and such other ports and places in any part of the world as the Master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding *Twelve (12)* calendar months.



ATTENTION OF MASTERS ESPECIALLY INVITED

Agreement To Ship in Foreign Trade.

(R. S. 4511, 46 U. S. C. 564): The master of every vessel bound from a port in the United States, to any foreign port other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or the Republic of Mexico, or of any vessel of the burden of seventy-five tons, or upward, bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall, before he proceeds on such voyage, make an agreement, in writing, or in print, with every seaman whom he carries to sea as one of the crew, in the manner hereinafter mentioned:

(U.S. 4579—46—U.S.C. 577). The master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement, omitting salaries, to be placed or posted up in such part of the vessel as to be accessible to the crew, and on default shall be liable to a penalty of not more than \$100.

Penalty for Shipment Without Agreement.

(R. S. 4514-46 U. S. C. 262) If any person shall be carried to sea, as one of the crew on board of any vessel making a voyage as hereinbefore specified in R. S. 4511, without entering into an agreement with the master of such vessel, in the form and manner, and at the place and times in such cases required, the vessel shall be held liable for each such offense to a penalty of not more than \$200. But the vessel shall not be held liable for any person carried to sea, who shall have secretly stowed away himself without the knowledge of the master, mate, or of any of the officers of the vessel, or who shall have falsely presented himself to the master, mate, or officers of the vessel, for the purpose of being carried to sea.

Shipment in Foreign Ports Before Consuls.

R. S. 4517-46 U. S. C. 170. Every master of a merchant vessel who engages any seaman at a place out of the United States and who, if such is known, fails to file before entering such seaman to sea, prior to the sanction of such officer and shall engage seamen in the U. S. ports, and the rules governing the engagement of seamen before a shipping commissioner in the United States shall apply to such engagements made before a consular officer, and upon every such engagement the consular officer shall endorse upon the agreement his sanction thereof, and an attestation to the effect that the same has been made and in his presence and otherwise duly made.

(R. S. 4415, P. L. 86-571). Every master or commanding officer of any vessel, other than a United States vessel, who permits any seaman in any place in which there is a consular officer, other than the vessel's cabin, to be intoxicated shall incur a penalty of not more than \$100, for which penalty the vessel shall be held liable.

Shipment of Seamen in the Coasting or Nearby Foreign Trade.

(June 19, 1886: Sec. 2, 46 U.S.C. 640: "Shipping commissioners may ship and discharge crews for any vessel engaged in the coastwise trade or the trade between the United States and the Dominion of Canada, or Newfoundland, or the West Indies, or the Republic of Mexico, at the request of the master or owner of such vessel.")

Watches Hours of Labor—Legal Holidays.

(R. S. 1151) Sec. 2—46 U. S. C. (Supp. IV 673) In all merchant vessels of the United States of more than one hundred tons gross, excepting those having the rivers, channels, lakes (other than Great Lakes), bays, sounds, bayous and canals exclusively, the licensed officers and sailors, boat passers, firemen, cutters, and water tenders shall, while at sea, be divided into at least three watches, which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel. No licensed officer or seaman in the deck or engine department of any tug documented under the law of the United States (except boats or vessels used exclusively for fishing purposes) navigating the Great Lakes, harbors of the Great Lakes, and connecting and tributary waters between Lake Erie and the Mouth of Niagara Falls, N. Y., and Ogdensburg, N. Y., shall be required or permitted to work more than eight hours in any twenty-four hour period of extraordinary emergency affecting the safety of the vessel or of life or property. The seaman shall not be shipped to work alternately in the fireroom and on deck, nor shall those shipped for deck duty be required to work in the fireroom or vice versa; nor shall any licensed officer or seaman

the deck or engine department be required to work more than eight hours in any day; but these provisions shall not limit the authority of the master or other officer or the obedience of the seamen when in the judgment of the master or other officer the whole or any part of the crew are needed for maneuvering, shifting berth, mooring, stowing, dunnage, the vessel or the performance of work necessary for the safety of the vessel, her passengers, crew, and cargo, or for the saving of life aboard other vessels in jeopardy, or when in port or at sea, from requiring the whole or any part of the crew to participate in the performance of fire, life-boat, or other drills. While such vessel is in port, harbor or seamen shall be required to do any necessary work on Sundays or the following-named days: New Year's Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, but this shall not prevent the departure of a vessel on regular schedule or when ready to proceed on her voyage. And at all times while such vessel is in a safe harbor, eight hours, inclusive of the anchor watch, shall constitute a day's work. Whenever the master of any vessel shall fail to comply with this section and the regulation issued thereunder, the owner shall be liable to a penalty not to exceed \$500, and the seamen shall be entitled to discharge from such vessel and to receive the wages earned; but this section shall not apply to vessels engaged in salvage operations. *Provided:* That in all tug and towage service to this section when engaged on a voyage of less than six hundred miles, the licensed officers and members of crew other than coal passers, firemen, oilers, and water tenders may, while at sea, be divided into not less than two watches, but nothing in this proviso shall be construed as repealing any part of section 222 of this title. This section shall take effect six months after June 25, 1936. (As amended June 25, 1936, c. 816, 2, 49 Stat. 1935 June 23, 1936, c. 597, 52 Stat. 941)

Page.

(U. S. 4552-446 U. S. C. 640) The following rules shall be observed with respect to the settlement of wages:
First, Upon the completion, before a shipping commissioner, of any discharge and settlement, the master or owner

and each seaman respectively, in the presence of the shipping commissioner, shall sign a mutual release of all claims for wages in respect of the past voyage or engagement, and the shipping commissioner shall also sign and attest it, and shall retain it in a book to be kept for that purpose: provided both the master and seaman assent to such settlement, or the settlement has been adjusted by the shipping commissioner.

(R. S. 4524—46 U. S. C. 591) A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

(R. S. 4530—46 U. S. C. 597) Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract, and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in section 4529 of the Revised Statutes, *Provided*, That notwithstanding any release signed by any seaman under section 4552 of the Revised Statutes, any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require.

Discharge in Foreign Trade.

(R. S. 4549—46 U. S. C. 611) All seamen discharged in the United States from merchant vessels engaged in voyages from a port in the United States to any foreign port, or being of the burden of seventy-five tons or upward from a port on the Atlantic to a port on the Pacific, or vice versa, shall be discharged and receive their wages in the presence of a duly authorized shipping commissioner under this Title (R. S. 4501-4612), except in cases where some competent court otherwise directs; and any master or owner of any such vessel who discharges any such seaman without thereto or pays his wages within the United States in any other manner, shall be liable to a penalty of not more than \$50.

(R. S. 4551—Subsec. (d)—46 U. S. C. Supp. IV 643, (d)) Upon the discharge of any seaman and the payment of his wages, the shipping commissioner shall enter in the continuous discharge book of such seaman, if the seaman carries such a book, the name and official number of the vessel, the nature of the voyage (foreign, intercoastal, or coastwise), the class to which the vessel belongs (steam, motor, sail, or barge), the date and place of the shipment and of the discharge of such seaman, the rating (capacity in which employed) then held by such seaman, and the signature of the person making such entries and nothing more.

(R. S. 4551—Subsec. (e)—46 U. S. C. Supp. IV 643, (e)) For the purpose of furnishing evidence of sea service in the case of seamen, preferring the certificate of identification instead of the continuous discharge book, the Bureau of Marine Inspection and Navigation shall provide a certificate of discharge, printed on durable paper, in such form as to specify the name and citizenship of the seaman to whom it is issued, the serial number of his certificate of identification, the name and official number of the vessel, the nature of the voyage (foreign, intercoastal, or coastwise), the class to which the vessel belongs (steam, motor, sail, or barge), the date and place of the shipment and of the discharge of such seaman, and the rating (capacity in which employed) then held by such seaman. Records of service entered in either continuous discharge book or certificates of discharge shall contain no reference to the character or ability of the seaman. The shipping commissioner shall issue such certificate of discharge and make the proper entries therein, which certificate shall be signed by the seaman to whom it is issued and the master of the vessel and shall be witnessed by such shipping commissioner.

(R. S. 4551—Subsec. (k)—46 U. S. C. Supp. IV 643, (k)) Where vessels are required to sign on and discharge the crew before a shipping commissioner and no shipping commissioner is appointed or is available the functions and duties required by subsections (d) and (e) of this section to be performed by such shipping commissioner may be performed by a collector or deputy collector of customs; and where vessels are not required to sign on and discharge the crew before a shipping commissioner the duties and functions required by subsections (d) and (e) of this section to be performed by the shipping commissioner shall be performed by the master of such vessel. Any master who shall fail to perform such duties or functions shall be fined in the sum of \$50 for each offense.

Discharge in Foreign Ports.

(R. S. 4580—46 U. S. C. 682) Upon the application of the master of any vessel to a consular officer to discharge a seaman, or upon the application of any seaman for his own discharge, if it appears to such officer that said seaman has completed his shipping agreement or is entitled to his discharge under any act of Congress or according to the general principles or usages of maritime law as recognized in the United States, such officer shall discharge said seaman, and require from the master of said vessel, before such discharge shall be made, payment of the wages which may then be due said seaman, but no payment of extra wages shall be required by any consular officer upon such discharge of any seaman except as provided in this act.

Arbitration Before Shipping Commissioner.

(R. S. 4554—46 U. S. C. 651) Every shipping commissioner shall hear and decide any question whatsoever between a master, consignee, agent, or owner, and any of his crew, which both parties agree in writing to submit to him; and every award so made by him shall be binding on both parties, and shall, in any legal proceedings which may be taken in the matter, before any court of justice, be deemed to be conclusive as to the rights of the parties. And any document under the hand and official seal of a commissioner purporting to be such submission or award shall be prima facie evidence thereof.

SUBSTITUTES

One pound of flour daily may be substituted for the daily ration of biscuit or fresh bread; two ounces of desiccated vegetables for one pound of potatoes or yams; six ounces of hominy, oatmeal, or cracked wheat, or two ounces of tapioca, for six ounces of rice; six ounces of canned vegetables for one-half pound of canned tomatoes; one-eighth of an ounce of tea for three-fourths of an ounce of coffee; three-fourths of an ounce of coffee for one-eighth of an ounce of tea; six ounces of canned fruit for three ounces of dried fruit; one-half ounce of lime juice for the daily ration of vinegar; four ounces of oatmeal or cracked wheat for one-half pint of corn meal; two ounces of pickled onions for four ounces of fresh onions.

When the vessel is in port and it is possible to obtain the same, one and one-half pounds of fresh meat shall be substituted for the daily rations of salt and canned meat; one-half pound of green cabbage for one ration of canned tomatoes; one-half pound of fresh fruit for one ration of dried fruit. Fresh fruit and vegetables shall be served while in port if obtainable. The seamen shall have the option of accepting the fare the Master may provide, but the right at any time to demand the foregoing scale of provisions.

The foregoing scale of provisions shall be inserted in every article of agreement, and shall not be reduced by any contract, except as above, and a copy of the same shall be posted in a conspicuous place in the galley and in the fore-castle of each vessel.

And the said crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said Master, or of any person who shall lawfully succeed him, and of their superior officers, in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats or on shore; and in consideration of which service to be duly performed the said Master hereby agrees to pay to the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the foregoing scale. And it is hereby agreed, that any embezzlement or willful or negligent destruction of any part of the vessel's cargo or stores shall be made good to the owner out of the wages of the person guilty of the same. And if any person enters himself as qualified for a duty which he proves himself incompetent to perform, his wages shall be reduced in proportion to his incompetency. And it is also agreed that if any member of the crew considers himself to be aggrieved by any breach of the agreement or otherwise, he shall represent the same to the Master or officer in charge of the ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require.

It is also agreed that

U.S.A. Insp.
Riders #44+72
included in this
contract



IN WITNESS WHEREOF the said parties have subscribed their names hereto on the days against their respective signatures mentioned.

on the 25th day of March 1944, Master, of

The authority of the owner or agent for the allotments mentioned in these articles is in my possession.

3 Coh...
Shipping Commissioner or Consular Officer

The Shipping Commissioner or Consular Officer will sign if such authority has been produced and will strike out in ink if it has not

Here the voyage is to be described, and the place named at which the ship is to touch, or, if that cannot be done, the general nature and probable length of the voyage is to be stated, and the port or country at which the voyage is to terminate.
If these words are not necessary they must be stricken out.

Sec. 4000, U. S. C. prohibits the wearing of smooth knives on ships, and the Master informs the crew of this law.
Here any other stipulations may be inserted to which the parties agree, and which are not contrary to law.

N. B.—This form must not be unstitched. No leaves may be taken out of it, and none added or substituted. Care should be taken at the time of engagement that a sufficiently large form is used. If more men are engaged during the voyage than the number for whom signatures are provided in this form, an additional form should be obtained and used.

Any Erasure, Interlineation, or Alteration in this Agreement will be void, unless attested by a Shipping Commissioner, Consul General, Consul, or Consular Agent, to be made with the consent of the persons interested

3/25/44

(Respondent's Exhibit G)

NGG 708

CERTIFICATE AS TO SHIPMENT OF SEAMEN
UNITED STATES COAST GUARD

State of

Port of Los Angeles, Calif.

On this 25th day of March, 1944, personally appeared before me, a Shipping Commissioner in and for the said port, George Petersen, Master S/S Mission Soledad, and the following-named seamen:

1 Stanley J. Hamm

* * * * *

And Such Others Whose Names Appear Opposite My
Signature or Initials.

Severally known to me to be the same persons who executed the instruments attached (shipping articles), who, each for himself, acknowledged to me that he had read or had heard read the same; that he was by me made acquainted with the conditions thereof, and understood the same; and that, while sober, and not in a state of intoxication; he signed it freely and voluntarily, for the uses and purposes therein mentioned.

[Seal]

B. Cohen

U. S. C. G. Shipping Commissioner.

It is agreed that the Master, Officers and Members of the Crew shall be furnished the war risk insurance protection covering Loss of Life, Disability (including Dis-

(Respondent's Exhibit G)

memberment and Loss of Function), Detention (including Repatriation and similar cases), and Loss of or Damage to Personal Effects perscribed by the Decisions of the Maritime War Emergency Board, as amended or modified from time to time, and the marine risk insurance protection covering such items afforded by the Second Seamen's War Risk Policy, as amended. Such personnel shall also receive the war bonuses specified by the Decisions of the Maritime War Emergency Board, as amended or modified from time to time.

* * * * *

Case No. 3915-H-Adm. Johnson vs. U. S. A. Respondent's Exhibit. Date May 31, 1945., No. "N" Identification. Clerk, U. S. District Court, Sou. Dist. of Calif. L. Wayne Thomas, Deputy Clerk.

COASTWISE (PACIFIC FAR EAST) LINE

222 Sansome Street

San Francisco 4, California

Date October 12, 1943

War Shipping Administration
Operations Regulation No. 72

Subject: Standard Rider for Attachment to Shipping Articles Concerning Repatriation of Crew Following Termination of Voyage by Reason of Occurrence of Marine or War Risk Casualties

(Respondent's Exhibit G)

Pertaining to

All American Flag Vessels Owned by or
Under Bareboat Charter to the War
Shipping Administration

All General Agents of the War Shipping Administration are directed to adhere to the following with respect to the above subject:

There shall be attached as a rider to all Shipping Articles hereafter opened with respect to all voyages of American flag vessels owned by or under bareboat charter to the War Shipping Administration, the following provision:

"It is agreed that in the event the voyage of the vessel is terminated because of the destruction of, abandonment of, or damage to, the vessel and termination of the employment of any crew member results or becomes necessary therefrom, each member of the crew:

"(1) shall be furnished transportation (in accommodations becoming first available) with meals and birth to the port of shipment, and

"(2) shall be paid until arrival at the port of shipment basic wages plus emergency wage increases (to the extent that the same or benefits comparable thereto are not otherwise payable under the decisions of the Maritime War Emergency Board, as they may be modified from time to time, or under any insurance policy covering such crew member issued by the War Shipping Administration or otherwise).

(Respondent's Exhibit G)

7/ "If rates are specified in any applicable collective bargaining agreement or other agreement covering such crew member for allowances for meals, living quarters or hotel accommodations, allowances hereunder for meals, living quarters or hotel accommodations, while awaiting or during repatriation and not otherwise provided, shall be at the rates so specified. Otherwise, such allowances for meals shall be \$3.50 per day for licensed personnel and \$3.00 per day for unlicensed personnel while traveling, and \$3.00 per day for licensed personnel and \$2.50 per day for unlicensed personnel while in port; and such allowance for living quarters or hotel accommodations shall be \$2.50 per day for licensed personnel and \$2.00 per day of unlicensed personnel. In all instances where meals, living quarters or hotel accommodations are otherwise provided no allowance shall be made or paid for the same.

"Provided: that there shall not be paid any cash allowance in lieu of transportation or subsistence actually furnished and that wages shall be paid hereunder only during the period such crew member is actually awaiting or in the course of repatriation to the port of shipment, excluding any period of detainment, either by capture by an enemy of the United States, or by internment; and

Provided further: that if any applicable collective bargaining agreement or other agreement covering such crew member makes provision under the above circumstances for furnishing similar benefits, the

(Respondent's Exhibit G)

crew member, at his option, may accept such benefits in complete substitution for the benefits herein provided."

Where the employment of crew members is terminated under the circumstances described in the foregoing rider, it is expected that American Consular Officers will continue to cooperate in caring for such crew members and in arranging for their transportation. It is also expected that foreign representatives of the War Shipping Administration and foreign agents of the vessel will request the aid of American Consular Officers in this connection when necessary. While in foreign ports meals and living quarters will in practically all instances be provided the crews and there will be no occasion for allowances to be granted for meals or living quarters. In the exceptional cases where meals or living quarters are not furnished crew members in foreign ports by either Consular Officers or representatives of the War Shipping Administration or foreign agents of the vessel, allowances for meals and living quarters specified in the rider are to be granted and will be for the account of the War Shipping Administration as hereinafter mentioned. It is contemplated, however, that in most cases it will not be necessary to grant such monetary allowances for meals and living quarters until arrival of the crew members at a continental port of the United States and while they are awaiting or are in the course of further transportation to the port of shipment, although even under these circumstances there will be many occasions where meals or living quarters are provided by the operator of the vessel or representatives of the War Shipping Ad-

(Respondent's Exhibit G)

ministration or other organizations which will obviate the necessity of granting monetary allowances.

The payment of wages to such crew members until arrival at the port of shipment will continue to be a matter to be settled by the General Agents of the vessel. In this connection attention is specifically directed to the provision in the rider that such wages are payable only to the extent that wages or benefits comparable thereto are not otherwise payable under the Decisions of the Maritime War Emergency Board or under any insurance policy covering the crew members which is issued by the War Shipping Administration or otherwise.

There are many occasions when crew members are landed in foreign ports under circumstances mentioned in the rider, without any funds. In such instances it is highly desirable that American Consular Officers be enabled to advance money to such crew members from the wages and benefits that may be due them. When the agent of the vessel receives notice that a crew from one of its vessels has been landed in a foreign port, the agent should immediately communicate with the State Department and make arrangements for depositing with the State Department such funds as are necessary to permit American Consular Officers to make advances not exceeding \$50. to each crew member against wages or benefits due him. At such time arrangements should also be made with the State Department that the agent of the vessel may receive a statement from the American Consular Officer of the advances made in order that the same may be taken into account when settlement of wages or other benefits are made with crew members upon their

(Respondent's Exhibit G)

arrival in the United States. The statement of such advances should be returned to the United States by the officer of the vessel who is first repatriated in order to facilitate prompt settlement of wages to the crew members upon arrival.

Under certain conditions repatriation by air may be the most reasonable and desirable means. Although the cost of such transportation generally exceeds the cost of transportation by vessel, it is to be remembered that wages of the crew members are payable while waiting and during repatriation and if it appears that vessel transportation may not be expeditiously arranged or it appears that a saving of repatriation wages and bonus equal in amount to the extra cost of such transportation will result, this method of transportation should be adopted, with the assistance, if necessary, of the Division of Marine Operations of the War Shipping Administration in Washington, in connection with the arrangement of air transportation priorities.

It should be stressed that the rider does not provide for first class transportation. Seamen being repatriated should be given consideration with respect to accommodations furnished, but they should be required to accept, as a fulfillment of the obligation to them contained in the rider, the accommodations first available which may include crew quarters or troop accommodations on army transports. Due to limitations of passenger space on certain vessels, and other factors, it may be necessary to sign on repatriated seamen as workaways, in some cases.

Expenses incurred by General Agents of vessels owned by or under bareboat charter to the War Shipping Ad-

(Respondent's Exhibit G)

ministration by virtue of the foregoing rider attached to such shipping articles, will be reimbursed by the War Shipping Administration in accordance with Article 7 of the GAA Agreement.

Since it is desirable that the foregoing arrangements for repatriation become effective immediately, and since it may require a considerable period of time before it will be possible to attach the rider above prescribed to the articles of vessels which are now on foreign voyages, it is requested that all repatriation which may become necessary following casualties occurring after the date of issuance of this Regulation, be in accordance herewith. Reimbursement for expenses so incurred will be granted to General Agents in due course pursuant to the provisions of this Regulation and the GAA Agreement.

(Sgd.) W. N. WESTERLAND

W. N. Westerlund

Assistant Deputy Administrator for Ship
Operations

September 30, 1943

Case No. 3915-H-Adm. Johnson vs. U. S. A. Respondent's Exhibit. Date May 31, 1945. No. N-2 Identification. Clerk, U. S. District Court, Sou. Dist. of Calif. L. Wayne Thomas, Deputy Clerk.

Case No. 3915. Johnson vs. U. S. A. Respondent's Exhibit G. Date 11/14/45. No. G in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. P. D. Hooser, Deputy Clerk.

[Endorsed]: Filed Mar. 30, 1946 [215]

[Title of District Court and Cause.]

TRANSCRIPT OF ORAL OPINION OF THE
COURT

* * * * *

Los Angeles, California, February 27, 1946, 10:00
O'Clock A. M.

The Court: Gentlemen, I have reached a conclusion in this Johnson case. I have had an opportunity and plenty of time to go through this record and read the evidence fully and examine the exhibits and the arguments of counsel presented to the former judge and I have also heard the ones presented here.

The first question presented is as to the validity of the release which is introduced here in evidence. The facts in the case indicate, to my mind, very clearly, that this release is invalid and it should be set aside. This libellant was without a lawyer or a doctor and wasn't apprised up to that time as to his rights. He was dealing with one who had the release prepared and was representing the other side, a lawyer who was, no doubt, versed in his rights. Up to that time, he had received an injury, the one in question here. The amount of the release was \$247, as I understand it, of which, from the indications made here by the respondent, \$150 of it covered damages. To my mind, this consideration of this release is not only an insufficient amount but it is unconscionable under the record in this case. To say that one who, on the record in this case, released all demands and claims he may have had under those circumstances—I can't see how any court can uphold [2] the consideration under these circumstances for such a release. So, therefore, this re-

lease, I have reached the conclusion, is invalid and should be set aside.

Now we come to the question of the items that are here presented to the court for consideration.

The first one is the item under the head of "Maintenance." The item of \$27.00, which appears on the statement relied upon and discussed before me, is allowed. That is the additional sum due from 7-5-44 to 7-23-44, at the rate of payment of \$3.50 a day.

The item, also, under "Maintenance" of \$70.00 is allowed. That covers from 7-30-44 to 8-18-44, at \$3.50 per day.

The item under "Maintenance" of \$1438.50 is disallowed and, also, the item of \$322.00, under that same heading, is disallowed. That covers from October 1st to November 15, 1945, at \$3.50 per day, or \$1438.50. That is disallowed.

Also, for the period from November 16, 1945, to February 15, 1946, at \$3.50 a day, or \$322.00, is disallowed. The facts, as I recall them, are that the libelant did not pay it out and did not obligate himself to pay it. He was with his relatives. As I understand it, the rule is the defendant would not be liable under that state of facts.

Now, the second one, wages on "Mission Soledad" until the termination of its voyage. The amount presented here [3] and claimed by the libelant is \$863.67. Straight wages for that item were \$480.17 and he was paid \$103.92. When you deduct that from the \$480.17, it leaves a balance of \$376.25, which is allowed. This is straight time from July 2, 1944, to November 14, 1944.

Now, as to the loss of wages, the libelant claims \$11,000. There is evidence here that his future disability probably would continue from 12 to 16 months at the time. At the rate of \$3600 a year, which I am allowing here, it would be, for 16 months, a figure of \$4800.00, which is allowed. One year would be \$3600 and four months more would make it \$4800. That figure, in that amount, is allowed. As to the item which is asked for as a bonus, as an element of general damages which the libelant claims, of \$487.27, that is disallowed. I can't find any authority for allowing bonuses or this bonus under this record. So that is disallowed.

The item of repatriation from San Francisco, as general damages, of \$22.50, is allowed.

Deducting, then, the \$247.00 which was paid to the libelant, the total items allowed up to that time are \$5,295.77. Then, deducting \$427.00, which was paid—I don't know whether that was 10 cents or not.

Mr. Fall: 10 cents.

The Court: —that would leave a balance of \$5,048.57, [4] I think it is, or sixty-seven cents.

Mr. Toner: May I interrupt? I think the court is taking some of it twice because that was already deducted when you deducted the \$103.92 from the man's straight wages. You see, there is only a balance of that \$247.10.

The Court: That should not be deducted the second time. Then the balance would be \$5,295.77.

Mr. Toner: Subject to the deduction of \$250 because the court only deducted the wage.

The Court: Yes; that is right. Now, let's see what that makes it, then. That will be \$5,145.70 on those items that I am allowing.

Mr. Fall: Your Honor, I have one other thing that I believe should be cleared up on this point. The estimate of twelve to sixteen months' disability was not from the date of injury but from November of last year, November of 1945, which was sixteen months after the date of injury. So you have actually an estimated period of disability of thirty-two months.

The Court: Do you disagree on the evidence on that?

Mr. Toner: Some of that is already covered, if the court please, because of the fact that the voyage terminated.

Mr. Fall: When did it terminate?

Mr. Toner: On November 15, 1944.

Mr. Fall: From November 15, 1944, the doctor estimated [5] a period of twelve to sixteen months. So it would be one year in addition to what your Honor has indicated, because the date of his estimate—

Mr. Toner: Apparently, the doctor's testimony was as of November. I believe that should be checked, however.

The Court: That there should be an additional year allowed in that?

Mr. Toner: That is correct. If the doctor speaks as of the 15th of November, 1945, there would be an additional year of wages.

The Court: All right; we will check that and, if there is an additional year, there will be \$3600 more.

Mr. Fall: I have it here and I can call your attention to—

Mr. Toner: May I ask for the computation of that final figure? Was it \$5,295.75?

The Court: \$5,295.77 and, deducting the figure I mentioned, it would leave \$5,145.77. But if there is another

year that comes in there, it will be \$3600 more added to that, because I am allowing \$3600 a year there.

Mr. Fall: On page 21, or starting on page 22 or, rather, on page 20, the doctor was asked by the court, "You did reach certain conclusions as of the date of this report, January 20, 1945?"

"The Witness: There is the report, yes. I have a con- [6] clusion based upon that examination, my original examination.

"The Court: You have seen him since?"

"The Witness: Yes, I have. On October 17, 1943, I examined him again."

Well, I was wrong there. That doesn't refer to it.

The Court: Have you got a transcript of it, counsel?

Mr. Toner: No; I don't have, your Honor.

The Court: I want to get that date correct. I got the impression that it was as I stated it but we will check it and see.

Mr. Fall: I thought I had it. I do recall the testimony.

The Court: I think there is a copy of the testimony in my office. You may have that to glance at. The secretary has it. You may check that date because it makes a difference of \$3600.

Mr. Toner: The exhibit would show also. There is something on the doctor's report, the second report, which might indicate it. That would be about Exhibit 14, I think. On page 33 is the reference, if the court please. "Q. By Mr. Fall: Doctor, since you have had your subsequent examination here in October of Mr. Johnson, will you state what you believe your prognosis is at the present time?"

"A. I think Mr. Johnson will eventually recover. I believe his rehabilitation is going to be slow. I have

altered [7] my prognosis in this respect, that his recovery will not take place as rapidly as I thought it would. I believe that original estimate I gave of eight to twelve months should be changed somewhat. It will probably take another year or sixteen months."

So that he would be speaking as of the date of the trial.

Mr. Fall: It was just about within a day or so of being a year from the date the boat terminated its voyage. I believe it was the same day, if I am not mistaken. That was on the 13th and 14th and the vessel terminated the voyage on the same date.

The Court: The original amount I allowed of \$5,145.-00 stands, then. That additional year doesn't come in, does it?

Mr. Fall: Yes; it comes in because the doctor is speaking from the year after the boat finished its voyage. He is stating that there would be another twelve to sixteen months from the date he was speaking of, which was one year subsequent to the termination of the voyage.

The Court: Read that and see if it does.

Mr. Fall: This is the time he was testifying, which was last November, a year after the voyage terminated.

"Q. By Mr. Fall: Doctor, since you have had your subsequent examination here in October of Mr. Johnson, will you state what you believe your prognosis is at the present time? [8]

"A. I think Mr. Johnson will eventually recover. I believe his rehabilitation is going to be slow. I have altered my prognosis in this respect, that his recovery will not take place as rapidly as I thought it would. I believe that original estimate I gave of eight to twelve months

should be changed somewhat. It will probable take another year or sixteen months."

He is speaking from the date of the trial. His first examination was in January and now he is speaking as of the date in November, which was a year after the boat finished its voyage. So another year properly, under the findings of the court, should be added to the amount.

The Court: Yes; I think that is correct. The total amount there, then, would be \$5,495.77 and I am allowing that amount. Or what is that cents figure?

Mr. Toner: The 77 cents was the item taken off of the wages.

The Court: The total of those items would be \$5,495.77.

Mr. Fall: No; \$3600 would be in addition to the 5,000.

The Court: \$3600 would be in addition to the \$5,145.77?

Mr. Fall: Let's get this.

The Court: Well, no; I have got it wrong here. It would be 8,000—

Mr. Toner: \$8,745.77.

The Court: Yes; that is right. That is the total amount [9] of these items that are allowed. That leaves the remaining question of general damages, which, are claimed here, to be disposed of.

There is pleaded in this complaint both general and specific negligence and the libelant is asking that the doctrine of *res ipsa loquitur* be applied. The court rules that the evidence shows both and that he can rely on that doctrine also. As I gather from this case, this libelant was on this boat, curling this rope around, and above him this block fell and hit him that was above him; that

there was a man above there that was a fellow servant of the working man. That is negligence. If he so operated that block up there that it swung around and struck this man in the head, that is negligence by a fellow servant. He has a right to rely on the doctrine as I have stated. He is asserting it, and the court is holding he may rely upon both if the evidence warrants it, and I draw the inference or presumption that negligence existed. I think, under the rule, that he is entitled to recover general damages.

Now, the question is what is a reasonable amount that should be allowed him under the circumstances of his physical condition. Of course, the court should try to reconcile what is fair and what is a reasonable amount. He has not received what we call a permanent injury; at least I don't so gather from this evidence. It may be agreed, though, he was hit [10] there in a vital place. He is dazed at times and has a lapse of memory. Some of the doctors seem to think that he will eventually recover. We are not bound entirely by the opinion of the doctors. We have to take the facts as we find them in this record and how this man has functioned since he has received this injury. From this record, he has not been the same since then, not in the same physical condition or mental condition. It is just a question of what is a reasonable amount to compensate him for that injury. He is a young man, 27 years old. I think, under the circumstances, it would be fair that \$7500 should be allowed him. I know he has claimed more.

So the total amount will be this \$8745.77 plus this general damage of \$7500. If you add those together, that is the total amount that he should recover under my view of the matter.

Mr. Fall: That would be \$16,245.77?

The Court: Yes. He is claiming in this complaint some \$37,000 but I don't believe the evidence warrants that under the evidence and rules and the law. He didn't pay it or obligate himself to pay it. He was with his relatives. I don't think he is legally liable to pay that. He didn't obligate himself to pay it. The evidence shows he was home with his folks. So I only allowed what I thought was proper under that item. [11]

You may prepare the findings and decree. I would suggest that both counsel prepare them and deliver them to me about the 6th or 7th of next March, together with what objections you have.

Mr. Fall: Suppose I do this, your Honor. I can contact Mr. Toner and we will prepare one I think that will be satisfactory to both counsel and then submit it to your Honor for your signature.

The Court: That will be all right, according to the views I have expressed here. You have the items there?

Mr. Fall: Yes.

The Court: That is the best judgment I can give you under the record.

Mr. Fall: The only thing I have to complain of is on one point but, however, we argued it.

The Court: You want the \$11,000?

Mr. Fall: No, your Honor; that isn't what I have in mind. It is the maintenance during that period of time. I think under that war shipping regulation it is mandatory and it is part of his contract.

The Court: Some judges don't hold that way.

Mr. Fall: I argued that matter in the United States Circuit Court of Appeals last November, that particular situation, and I used that same argument about the fel-

low being laid up for a while and living in a flophouse. And Judge [12] Denman stopped me and said, "That man is entitled to a reasonable amount." The allegation I had in that particular case was that he was entitled to recover a reasonable amount and the court said I had stated a good cause of action; that I didn't have to state I had paid out the amount.

The Court: You can allege he is entitled to a certain amount and that would cover the payment or obligation.

Mr. Fall: That particular point is going to be right on all fours with what is presented here. It is going to be decided by our Ninth Circuit, before very long, in a case that is going up now, that I am in, and it will be determined.

The Court: If one goes home and is taken care of, unless he obligates himself to pay his parents, he shouldn't recover.

Mr. Fall: Suppose the man had no parents to go to.

The Court: But in this case he did.

Mr. Fall: If somebody else takes over the obligation of supporting him, that wouldn't relieve the respondent.

Mr. Toner: Does the court find that the libelant was actively engaged in the operation about the block and tackle? In other words, I think that we should specify directly what the finding of this court is with reference to what the libelant was doing at the time he was struck.

The Court: He was curling a rope down there, curling it around, and this block was up above him and fell and struck him. [13]

Mr. Toner: I think the court is somewhat in error on that. The block was above him there, diagonally above him.

The Court: If it hit him on the head, it would have to be above him. This man above was operating that block up there.

Mr. Fall: There was a stipulation that he dropped it.

Mr. Toner: The idea is, if the court please, that the block was in a horizontal position and the libelant was over here and here was the beam and the man let go of the block, we will say, and it dropped this way. Normally, it would drop straight but the rope to which it was attached was lying over this beam and it swung as in a pendulum.

The Court: Somebody swung it down on him.

Mr. Toner: That was the force of gravity as it fell this way.

The Court: You stipulated he dropped that block from above there and hit this man.

Mr. Fall: The man testified, "I was coiling lines just before the accident happened."

The Court: That is all he was doing and this block was up above him.

Mr. Toner: That is true.

The Court: I would assume, under any of the physical facts, that the block was above him if it hit him on the head. That is the best I can do for you under this record.
[14]

Mr. Fall: I thank your Honor and we will prepare it and send it to your Honor.

The Court: If you can have it around here about the 7th of the month, with any objections, I will try to settle the decree at that time.

Mr. Fall: We may be able to work this out between us. I will prepare a tentative draft of it and submit it.

The Court: Yes.

Mr. Toner: Will there be a hearing at 10:00 o'clock or shall we submit it in chambers?

The Court: You may submit it in chambers.

Mr. Fall: We may have it before that.

The Court: Yes; whenever you have it ready. I won't be here on Saturdays.

Mr. Fall: There is one thing, your Honor. I had requested in the libel that the judgment for maintenance, if any, be without prejudice to any date after I had alleged in the libel. For instance, if the man today incurs liability for maintenance, he is entitled to recover. Under the decision of *Calmar Steamship Company v. Taylor*, the man can maintain his action for maintenance and recover only for a short time, where the man is definite that he is going to be disabled, without prejudice to his recovering for any period after that time that is definitely ascertainable at the time of the trial. And in the *Calmar Steamship Company* case they [15] allowed three months and they indicated that three months would be sufficient and that you couldn't award a lump sum for maintenance. I believe that the decision should run without prejudice to any rights occurring after the period set forth in this libel. If your Honor would like me to read that particular portion of the *Calmar* case, I would be glad to do so.

The Court: What do you say as to that?

Mr. Toner: The case is correct as cited. It was a case in which this man was disabled at the time of trial and maintenance was awarded up to the time of the trial plus 90 days into the future, and that was awarded on the basis of the court's estimate of what the man would be entitled to for that 90 days. The man, after the ex-

piration of the 90 days, is then entitled to sue for additional maintenance as he becomes entitled to it. In this particular case, had this court found that the man was entitled to maintenance up to the time of trial, on November 15th—the court, say, would find a thousand dollars or thereabouts and then the court would also be entitled to find \$300 for maintenance for 90 days into the future. So judgment for maintenance would be in the amount of \$1300. And say a year goes by and he has actually incurred maintenance items for that next nine months. If we figure a hundred dollars a month, he could then sue and recover and additional \$900. So that his rights to maintenance [16] are not really cut off until the man has reached a point where no further improvement is expected.

The Court: Do you want the court to guess at that and fix the time?

Mr. Toner: The Supreme Court in the Calmar case says the court is entitled to guess 90 days in the future.

The Court: Have you any objection to that going in here?

Mr. Toner: No; that is perfectly all right.

The Court: All right; we will just enter it in if you don't object. If you don't object to it, that will be all right.

Mr. Toner: I think, whether it is in the finding or not, it is, as a matter of law, the man's right to sue in the future.

The Court: Yes; I should think he would have the right under the law. Anyhow, if you don't object to it, we will put it in there.

Mr. Fall: I think that the amount you awarded for the general damages is a fair amount. That is something you can't figure.

(A recess was taken at the hour of 11:50 a. m.) [17]

CERTIFICATE.

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 7th day of March, A. D., 1946.

ROSS REYNOLDS,
Official Reporter.

[Endorsed]: Filed Apr. 22, 1946.

[Endorsed]: No. 11378. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Robert C. Johnson, Appellee. Robert C. Johnson, Appellant, vs. United States of America, Appellee. Apostles on Appeal. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed July 10, 1946.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11378

UNITED STATES OF AMERICA,

Appellant and Cross-Appellee,

vs.

ROBERT C. JOHNSON,

Appellee and Cross-Appellant

POINTS UPON WHICH CROSS-APPELLANT
INTENDS TO RELY

Cross-appellant intends to rely upon the following points
in his cross-appeal:

1. The District Court erred in not finding that libelant was entitled to recover maintenance at the rate of \$3.50 per day from August 2, 1944 to August 18, 1944, inclusive.
2. The District Court erred in not finding that libelant was entitled to recover maintenance and cure in the sum of \$3.50 per day from the 1st day of October 1944 until a reasonable time after the date of the trial of the above-entitled matter.
3. The District Court erred in concluding that because libelant's maintenance was paid for by his parents, he was not entitled to recover therefore.
4. The District Court erred in not concluding and decreeing that libelant was entitled to recover his maintenance in the total sum of \$1957.50, without prejudice to maintenance after February 15, 1946.

5. The District Court erred in concluding and holding that libelant was entitled to recover the sum of \$37.50 for his maintenance.

Dated: July 15, 1946.

DAVID A. FALL

Proctor for Appellee and Cross-Appellant

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jul. 17, 1946. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

APPELLANT'S STATEMENT OF POINTS AND
DESIGNATION OF PARTS OF RECORD

(Rule 19, Subd. 6)

The following is a statement of the points upon which the appellant, United States of America, intends to rely in its appeal herein:

1. That the evidence in said cause does not support the findings of fact and conclusions of law of the trial court in each of the several respects set forth in the appellant's Assignments of Error, and does not justify an adjudication that the appellant was solely or otherwise at fault for the alleged injury.

2. That the evidence in said cause does not justify an adjudication that the release executed by the libelant was not valid.

3. That the evidence in said cause does not justify an adjudication that the libelant is entitled to recover from the appellant the sum of \$16,343.87, or any other sum.

* * * * *

Dated: July 17, 1946.

Respectfully submitted,

JAMES M. CARTER
United States Attorney

RONALD WALKER
Assistant United States Attorney

ROBERT E. WRIGHT
Assistant United States Attorney

HAROLD A. BLACK
GEORGE E. TONER
McCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS & GREENE

Proctors for Appellant

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jul. 22, 1946. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER THAT CERTAIN EXHIBITS NEED NOT
BE PRINTED, BUT MAY BE REFERRED TO
IN THEIR ORIGINAL FORM

Good cause therefor appearing, It Is Ordered that the
following photographs

Libelant's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
12, and 13

need not be printed, but may be referred to proctors for
respective parties, and will be considered by this Court in
their original form.

FRANCIS A. GARRECHT

Senior United States Circuit Judge.

Dated: San Francisco, Calif., July 31, 1946.

[Endorsed]: Order, etc. Filed July 31, 1946. Paul P.
O'Brien, Clerk.

[Title of District Court and Cause.]

PETITION FOR APPEAL

To the Honorable C. C. Cavanah, Judge of the United States District Court, Southern District of California, Central Division:

Libelant Robert C. Johnson, respectfully prays that he may be permitted to take a cross-appeal from the final decree entered in the above-entitled matter by the above Court on the 8th day of March, 1946, to the United States Circuit Court of Appeals, for the Ninth Circuit; for the reasons specified in the Assignment of Errors which is filed herewith, and that a Citation may issue, and that this Court make its Order waiving the furnishing of bonds or prepayment of or making deposit to secure fees or costs upon the part of the cross-appellant and petitioner herein.

Dated: San Pedro, California, June 5, 1946.

DAVID A. FALL

Proctor for Libelant [54]

POINTS AND AUTHORITIES

A seaman may prosecute and appeal without bond or prepayment of costs.

Cekalovich v. Ruljanovich, 1944 A. M. C. 617, 142 F. 2d 430.

Respectfully submitted

DAVID A. FALL

Proctor for Libelant [55]

Received copy of the within Petition for Appeal this 7 day of June, 1946. George E. Toner, attorney for respondent.

[Endorsed]: Filed Jun. 7, 1946. [56]

[Title of District Court and Cause.]

ORDER ALLOWING CROSS-APPEAL WITHOUT FURNISHING BOND OR COSTS

The petition of libelant Robert C. Johnson, for an appeal from the final decree entered in the above-entitled cause on March 8, 1946, is hereby granted and the cross-appeal is allowed.

It Is Further Ordered that this cross-appeal may be taken by the petitioner without furnishing bonds or prepayments of or making deposit to secure fees and costs pursuant to Title 28, Section 837, U. S. C. A.

Dated at Los Angeles, California, this 7 day of June, 1946.

PAUL J. McCORMICK

United States District Judge [57]

Received copy of the within Order Allowing Cross-Appeal this 7 day of June, 1946. George E. Toner, attorney for respondent.

[Endorsed]: Filed Jun. 7, 1946. [58]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Now comes the libelant herein and assigns the following errors in the above-entitled proceedings:

I.

The District Court erred in not finding that libelant was entitled to recover maintenance at the rate of \$3.50 per day from August 2, 1944 to August 18, 1944, inclusive.

II.

The District Court erred in not finding that libelant was entitled to recover maintenance and cure in the sum of \$3.50 per day from the 1st day of October, 1944 until a reasonable time after the date of the trial of the above-entitled matter.

III.

The District Court erred in concluding that because libelant's maintenance was paid for by his parents, he was not entitled to recover therefore. [59]

IV.

The District Court erred in not concluding that libelant was entitled to recover his maintenance in the total sum of \$1957.50, without prejudice to maintenance after February 15, 1946.

V.

The District Court erred in concluding that libelant was entitled to recover the sum of \$37.50 for his maintenance.

Dated: San Pedro, California, June 5, 1946.

DAVID A. FALL

Proctor for Libelant [60]

Received copy of the within Assignment of Error this 7 day of June, 1946. George E. Toner, attorney for respondent.

[Endorsed]:: Filed Jun. 7, 1946. [61]

[fol. 310] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT

No. 11378

UNITED STATES OF AMERICA, Appellant,

vs.

ROBERT C. JOHNSON, Appellee

ROBERT C. JOHNSON, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

Upon Appeals from the District Court of the United
States for the Southern District of California, Central
Division

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT

[fol. 310a] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 11378

UNITED STATES OF AMERICA, Appellant,

vs.

ROBERT C. JOHNSON, Appellee

ROBERT C. JOHNSON, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

MOTION FOR ORDER TO TAKE FURTHER PROOF

To the United States of America, Appellant and Appellee,
and to Harold A. Black, George E. Toner, McCutchen,
Thomas, Mathew, Griffiths & Greene, and James M. Car-
fer, United States Attorney, Ronald Walker and Robert
E. Wright, Assistants U. S. Attorney, Proctors for
United States of America:

You and each of you please take notice that appellee and
appellant Robert C. Johnson, hereby moves the above-
entitled Court for an Order directing the taking of further

proof in the above matter to be presented to the above- [fol. 311] entitled court on the trial *de novo*, by ordering the taking of the Deposition of Dr. Dorrell G. Dickerson and Robert C. Johnson, before the Court Reporter in the United States District Court, Southern District of California, who took the testimony in said matter, or before such reporter as the Court may designate.

Said Motion will be made upon the grounds that the condition of Appellee and Appellant Robert C. Johnson still entitles him to maintenance; and that the evidence of his physical condition as the result of his injuries will indicate to the Court an additional definite period for which he will require maintenance. That the introduction of this evidence upon the trial *de novo* will obviate another action in the United States District Court, as there was no evidence before the Court at the trial of the case that was definite enough to enable the Court to now set a period over which Appellee and Appellant Robert C. Johnson should be awarded maintenance.

Said Motion will be further based upon the affidavit of Robert C. Johnson, and upon the records and all files herein.

Dated: October 21, 1946.

David A. Fall, Proctor for Appellee and Appellant
Robert C. Johnson.

[fol. 312] . . AFFIDAVIT OF ROBERT C. JOHNSON

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Robert C. Johnson, being first duly sworn, deposes and says: That he is the cross-appellant in the foregoing action.

That affiant has been unable to engage in any employment as the result of his injuries from the date said injuries were sustained on June 30, 1944. That no money has been paid to affiant by respondent United States of America for his maintenance and cure since July 31, 1944, and affiant has been required to borrow money upon which to pay for his maintenance, and to accept the assistance of his parents in the payment of his maintenance during all times after July 31, 1944, except that he had about

\$600.00 upon the said July 31, 1944 which he spent upon his maintenance and various necessities.

That affiant still has headaches, but which are less severe and of shorter duration than a year ago. That affiant still is extremely nervous, but has improved in this respect during the past year. That affiant has been advised by his doctor, Dr. Dorrell G. Dickerson, not to return to, or attempt to return to employment at this time, but that he will fully recover in a matter of months.

Robert C. Johnson.

Subscribed and sworn to before me this 20 day of October, 1946. David A. Fall, Notary Public, in and for the County of Los Angeles, State of California.

(Endorsed: Filed October 23, 1947.)

[fol. 313] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT

EXCERPT FROM PROCEEDINGS OF MONDAY, JANUARY 13, 1947

Before Mathews, Stephens, and Orr, Circuit Judges

ORDER SUBMITTING MOTION TO TAKE FURTHER PROOF, ETC.,
AND SUBMITTING CAUSE ON MERITS

Ordered motion of appellant Johnson to take further proof, and cause on merits argued by Mr. George E. Toner, proctor for appellant, United States and by Mr. David Fall, proctor for appellant Johnson, and submitted to the Court for consideration and decision, said proctors orally stipulating that if further testimony is deemed proper by the Court, the report of October 21, 1946 of Darrell G. Dickerson, M. D., may be considered as such further testimony, leave granted to Mr. Fall to file original report and three copies thereof as a part of the motion to take further proof.

[fol. 314] [stamp:] Received Jan. 13, 1947. Paul P. O'Brien, Clerk

#11378

Dorrell G. Dickerson, M.D., F.A.C.S., 1401 South Hope Street, Los Angeles 15, California

October 21st, 1946.

Johnson, Mr. Robert C. 1430 South 28th Street, San Diego, California.* Age: 29 years. Single. Occupation: Merchant seaman. Injured June 30th, 1944. New Address: 2848 Bernard Street, San Diego, California.*

Complaints: "I still have headaches—not as severe or as prolonged as they were. Not much sick headache. My gait is better. I can't gain any weight. I am nervous. My hands and feet are very cold and perspire freely. If I rest I feel better."

Interval history: No medical care. No work. Sleep is fairly good. Appetite is said to be fair to good. Elimination is normal. Bladder is normal. Weight remains about the same 128 lbs. Can't seem to gain weight. Takes headache tablets—2 to 4 daily (empirin tabs). Headache is chiefly in the back of head every day—not as severe or as long as it was before. If he lies down the sick headache finally disappears.

Examination: There is no great change in the general physical appearance. There may be some loss of weight—he is thin and his color is pale. The skull is normal shape and size. The tenderness alleged in the left occipital area has somewhat abated—but he still complains of this. No cranial defects are noted. Ears are negative. Nares unobstructed. Mouth clean—teeth normal. Throat negative. The thyroid is not enlarged. Post cervical lymph nodes are not palpable. He continues to complain of neck soreness when turning head from side to side and when performing chin to chest movements. There are no deformities or muscle spasm or crepitus at this time. Alleges some slight tenderness in the area of 6-7th cervical vertebral bodies. No signs of trauma and there is no muscle spasm.

Heart shows no murmurs or thrills and the position is normal. The blood pressure is normal. Pulse is 76-78 and regular and quality is good. Abdominal complaints are not mentioned. The upper members are anatomically

normal and the lower extremities show no defect. Back is negative for defect.

Neurological examination: Cerebral O. T. Cranial: Olfactory normal. Optic normal. Oculomotor negative. Trochlear negative. Trigeminal negative. Abducens negative. Facial normal. Acoustic negative. Glossopharyngeal negative. Vagus negative. Accessory negative. Hypoglossal negative. Fundi: The left fundal veins remain somewhat full. The discs appear to be mildly elevated and cups shallow.

Deep reflexes: Biceps, triceps, supinator and wrist reflexes present and within normal. Patellars and tendon Achilles reflexes equal and normal. Superficials somewhat sluggish but equal and within normal. Plantars are equally sensitive. No Babinski; Chaddock, Gordon, Oppenheim etc. No clonus. Coordination normal. Some fine tremors of eyelids and fingers. Cerebellar tests normal. Motor examination reveals no atrophy or weakness. The Romberg is done with normal swaying. Gait is natural. Sensory fields normal for all modalities.

Cerebral lobes: Frontal—memory etc. normal—except he cannot recollect certain events connected with injury of 6/30/44. Temporal—speech normal. Parietal—stereognostic sensibility normal. Occipital—visual fields normal on confrontation tests.

[fol. 315] Basal metabolism test: Report attached—this shows a subnormal thyroid function. Statement attached.

Conclusions

This young man is steadily improving. He admits that his complaints are lessening and that he is feeling much better.

The neurological examination is almost the same as when last made—10/17/45.

He is still temporarily disabled but should fully recover in from 4 to 6 months. He is now making a garden at his home and making an endeavor to rehabilitate himself.

No permanent disability is anticipated.

File is herewith returned.

D. G. Dickerson.

DGD/jed/3.

[fol. 316] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT

EXCERPTS FROM PROCEEDINGS OF MONDAY, MARCH 24, 1947

Before Mathews, Stephens and Orr, Circuit Judges

ORDER DIRECTING FILING OF OPINION AND FILING AND
RECORDING OF DECREE

Ordered opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

[fol. 317] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 11,378

UNITED STATES OF AMERICA, Appellant,

vs.

ROBERT C. JOHNSON, Appellee

ROBERT C. JOHNSON, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

March 24, 1947

Upon Appeals from the District Court of the United States
for the Southern District of California, Central Division

Before Mathews, Stephens and Orr, Circuit Judges.

ORR, Circuit Judge:

Robert C. Johnson, appellee, a seaman on the S.S. "Mission Soledad", a vessel owned and operated by appellant through the War Shipping Administration, was injured on June 30, 1944 while performing duties aboard his ship at Pearl Harbor.

Appellee was assisting in securing a boom and, at the time he was injured, was engaged in an operation known

as "rounding in" blocks to bring two blocks of a block and tackle together. Appellee was on the main deck walking forward pulling on the hauling or "free" end of a rope (which was attached to the block) while a shipmate, one Dudder, on the meccano deck above and to the rear of appellee, held the block in his hands. Appellee would pull on the rope and coil the free part of the line thus accumulated while Dudder, holding the block, walked forward on the meccano deck at a rate of speed controlled by appellee. [fol. 318] The ropes had to be kept comparatively taut so that they would not foul. At all times before the accident appellee had been able to pull freely on the line he was coiling and Dudder had not pulled back on the block or jerked appellee's rope. The last thing appellee remembers before the accident is that he was bending over coiling the line on the deck.

It is stipulated that a "block, which was being removed by a man working above libellant (appellee) fell, striking libellant on the back of the head. Libellant alleges that this accident was due to the negligence of the ship and respondent (appellant) denies that such injuries were caused by any negligence of the ship".

An initial report of the accident on a form filled out by the purser of the vessel indicated that the "guy block was caught on a davit, one of the men cast it off and line and block fell free striking this sailor on the back of the head".

While this report was marked for identification, it does not appear that it was ever formally admitted in evidence.

Appellant states that they located Dudder and arranged for his deposition to be taken and made available the transcript to appellee. Appellee did not offer this deposition, his counsel stating in argument that he was not satisfied with certain parts of it and because "there is no burden on the libellant to bring in adverse witnesses".

Appellant also failed to offer it because, as their counsel stated, they felt it incumbent upon appellee to prove negligence.

The trial court found that appellee had been injured by the block which "was negligently and carelessly dropped by a fellow seaman". In an oral opinion the court ruled that the evidence showed both negligence and a case for the application of the doctrine of *res ipsa loquitur*, and, on the basis of the liability so found, the court awarded dam-

ages for anticipated loss of wages, and for pain and suffering.

The case was tried before Judge Hollzer who died after its submission but before deciding the matter. The cause was then submitted on stipulation to another District Judge who decided the matter on the written record and oral argument and without the usual opportunity of a trial [fol. 319] judge to see and hear the witnesses. For that reason, and because this is an appeal in admiralty, the findings of the trial court do not come to us encased in their usual armor.¹

Appellant contends, (1) that there is no evidence to support the District Judge's finding of negligence, and (2) that the doctrine of *res ipsa loquitur* is not here available as a substitute for proof of negligence.

We think both of these contentions are well taken. As to the first, the only testimony on the subject of negligence is the evidence of appellee who stated that Dudder was carrying the block and walking forward on the meccano deck above, as appellee would pull on the rope. Appellee's evidence does not confirm the unsupported statement in the purser's later report of the accident, and appellee's evidence is at variance with the pre-trial stipulation, since appellee's testimony showed that Dudder was not directly "above libellant" but was diagonally above him and to his rear. Further, Dudder was not "removing a block" but was assisting appellee in "rounding in", i. e., carrying the block forward as appellee pulled free lengths of the line attached to the block, and coiled the line thus accumulated.

There is no competent evidence that Dudder *dropped* the block or was otherwise negligent in any way. There is, in fact, no evidence as to Dudder's activities, appellee having chosen not to use Dudder's deposition, although he is resting his case, so far as negligence is concerned, entirely on the negligence of a fellow-servant. This gap in appellee's case is thus necessarily fatal to his contention.

The closest approach to the time of the accident to which the evidence points is the time appellee was coiling the rope. He has no memory of subsequent events and no competent evidence appears as to just what did occur. The finding of the lower court that appellant was negligent finds

¹ Cf. *The Ernest H. Meyer*, 84 F. 2d, 496, 501, CCA 9; cert. den. 299 U. S. 600.

no support in the record. The mere occurrence of an accident does not warrant a finding of negligence.²
[fol. 320] Appellee argues that in the event it is found appellant was not negligent then he is entitled to recover under the doctrine of *res ipsa loquitur*.

It is generally said that before the doctrine of *res ipsa loquitur* will apply it must be shown that "the thing which causes injury, without fault of the injured person is . . . under the exclusive control of the defendant, and the injury is such as in the ordinary course of things does not occur if the one having such control uses proper care . . ."³

It is also said that the doctrine is not applicable unless "by a process of probable reasoning, the facts and circumstances point out the wrongdoer, the tortious character of his act and exclude other probable causes of the injury."⁴

And when these things are shown, the doctrine "affords reasonable evidence, in the absence of an explanation, that the injury arose from the defendant's want of care."⁵
". . . that is to say, if there is nothing to explain or rebut the inference that arises from the way in which the thing happened, it may fairly be found to have been occasioned by negligence".⁶

The Supreme Court in *Jesionowski v. Boston and Maine Ry.*, 67 S. Ct. 401, laid down the rule that courts are not to apply a "conceptualistic interpretation" of *res ipsa loquitur*, and that an examination of the facts and circumstances of a particular case should be made. The Supreme Court said:

"The question here really is . . . whether the circumstances were such as to justify a finding that this derailment was a result of the defendant's negligence."
Jesionowski v. Boston & Maine Ry., supra, 67 S. Ct., 404.

² *Atchison, T. & S.F.R. Co. v. Toops*, 281 U. S. 351;

The Tawmje, 80 F. 2d, 792;

Interstate Circuit v. LeNormand, 100 F. 2d, 160.

³ *San Juan Light & Transit Co. v. Requena*, 224 U. S. 89, 98-9;

Liggett & Meyers T. Co. v. DeLape, 109 F. 2d, 598, 601 CCA 9.

⁴ *Smith v. U. S.*, 96 F. 2d, 976, CCA 5.

⁵ *San Juan Light & Transit Co. v. Requena*, supra, note 3.

⁶ *Sweeney v. Erving*, 228 U. S. 233, 238-9.

We think the circumstances of this case are not "such as to justify a finding that this [accident] was a result of [appellant's] negligence."

Appellee was pulling on a line attached to a block being carried by Dudder. In some manner, unexplained by appel-[fol. 321] lee, and not revealed by the evidence, the block fell and hit appellee. Appellee contends that because he was coiling the line "just before the accident", he has negatived any possibility that he *pulled* the block from Dudder's hands⁷ and so caused his own injury.

Appellee testified that he was coiling the line and that was the "last thing [I] knew before the accident . . . I was bending over. That is all I remember".

The last act remembered by appellee of coiling the rope is not a fact from which we can *infer* that Dudder dropped the block, rather than having it pulled out of his hands by appellee. This becomes more evident when it is remembered that in many concussion cases lapse of memory antedates the actual injury by short periods of time. The first diagnosis of appellee's injury was a probable mild concussion.

It must also be borne in mind that the block and tackle on which appellee and Dudder were working is designed for the "purpose of multiplying force",⁸ and that whatever the force of appellee's pull on the rope that pull was multiplied at Dudder's end of the block by at least three to four times the force exerted by appellee, since there were four lines of rope between the blocks. Thus, if appellee pulled on the free end of the rope with a 25-pound pull, Dudder's end of the block would come along with a pull of at least 71.4 pounds.⁹

Under these circumstances, with the actual cause of the accident totally unexplained, we cannot say that the "facts of the occurrence warrant the inference of negligence", (*Sweeney v. Erving*, supra, note 6, p. 240) or "that the circumstances were such as to justify a finding" that the

⁷ The argument is that as he had a free length of line in his hand and was coiling it, it was not necessary for him to pull the line again before the accident and that therefore Dudder must have dropped the block.

⁸ Knight, *Modern Seamanship*, 10th Ed. p. 108.

⁹ Knight, *Modern Seamanship*, 10th Ed. p. 109.

accident was the result of appellant's negligence. (*Jesionowski v. Boston & Maine Ry.*, *supra*).

There is no presumption of negligence from mere proof of the accident (*Sweeney v. Erving*, *supra*, note 6, p. 238; *Smith v. U. S.*, *supra*, note 4) and this is not a case where [fol. 322] the circumstances of the occurrence that has caused the injury are of a character to give ground for a reasonable inference that if due care had been employed by the party charged with care in the premises, the thing that happened amiss would not have happened." (*Sweeney v. Erving*, *supra*, note 6, p. 238.)¹⁰

Prunty v. Allred, 73 Cal. App. 2d, 67, relied on by appellee, was a case where the facts did warrant the inference of negligence since in that case there was evidence that the driver of the bus was responsible for the accident when he "returned rather suddenly" to his own lane of traffic after passing another vehicle.

In *Leet v. Union Pacific Co.*, 25 Cal. 2d, 605, cert. den. 325 U. S. 866, also cited by appellee, it was admitted by defendant railway that the case would be a proper one for the application of *res ipsa loquitur*, but it was argued that the doctrine was not available to plaintiff because specific acts of negligence were proved. The California Supreme Court merely held that evidence, introduced by the plaintiff, of specific acts of negligence will not deprive plaintiff of the benefit of *res ipsa loquitur*, assuming the case is otherwise a proper one for its application. (25 Cal. 2d, 620)

We do not think that the falling of a block during a "rounding in" operation is an accident which is "ordinarily the result of negligence" such as a derailment in the *Jesionowski* case, *supra*. No negligence appearing, the awards of general damages for pain and suffering and for anticipated loss of wages are disallowed.

The award of additional maintenance, wages to the end of the voyage, and travel allowance, is dependant upon the validity of a general release signed by appellee, which appellant sets up as a complete defense to this action. In determining the validity of the release we are aware of the careful scrutiny we are required to give a seamen's releases.

¹⁰ Cf. *Buzynski v. Luckenbach S. S. Co.*, 19 F. 2d, 871; 31 F. 2d, 1015; cert. den. 279 U. S. 867.

II

Appellee was given first aid ashore immediately after his injury and returned the same day to his ship. The next [fol. 323] day, July 1, 1944, suffering from headache, dizziness, and nausea, appellee reported to the United States Public Health Office in Honolulu and was hospitalized until July 5, when he was discharged with (according to the clinical record) "marked improvement of all symptoms * * * not fit for duty for an indefinite period. Fit for travel".

He testified that he still felt dizzy and had headaches; that the doctors told him he would have headaches for sometime but that eventually they would pass away and that appellee was "not to be worried about them".

Appellee was paid \$462.30 in Honolulu after he was discharged from the hospital, representing wages and bonus due him through July 1, 1944. He was also paid maintenance at the rate of \$2 per day from July 5, to July 22, 1944. He was returned to the United States as a passenger on a vessel leaving Honolulu on July 22 and arriving in San Francisco, Sunday, July 30, 1944, with approximately \$400 in his possession.

The next day appellee signed a general release. We test the validity of this release by the standard set by the Supreme Court in *Garrett v. Moore McCormack*, 317 U. S. 239, 248:

"The burden is upon one who sets up a seaman's release to show that it was executed freely, without deception or coercion, and that it was made by the seaman with full understanding of his rights. The adequacy of the consideration and the nature of the medical and legal advice available to the seaman at the time of signing the release are relevant to an appraisal of this understanding."

On July 31, 1944, wishing to draw his wages for the month of July, appellee went to the office of Pacific Tankers, general agents for the War Shipping Administration. He was referred to the office of the attorney for the insurance underwriters and he went to that office the same day. He was not represented by counsel and had not consulted an attorney prior to this interview with the claims attorney for the insurance company. Nor had he had any medical examination or advice since he was discharged from the hospital in Honolulu other than a telephonic conversation

with someone at the Marine Hospital in San Francisco the day he arrived. He reported then that his headaches were [fol. 324] continuing but that the Honolulu physicians had told him they would continue for a time. He was told over the telephone by someone at the Marine Hospital that if he did not feel in need of hospitalization he need not come out. He thereupon decided not to report to the hospital.

He was 25 years of age; his education included one year's study of business administration at the University of Arizona; he had worked as a metal mechanic at Consolidated Aircraft, and had had two years' service in the merchant marine.

The claims attorney to whom he was referred had been engaged in handling and adjusting maritime claims for insurance companies for 14 years. During the period he interviewed appellee he was conducting four or five similar interviews a day, five days a week.

Appellee told the attorney he was fully recovered and signed a statement to that effect.

Appellee had wages, after deductions for taxes, of \$97.10 due him for July, and he was paid this sum plus \$150 at the conclusion of his interview with the claims attorney and signed a general release for all claims he then had or might in the future have for damages, maintenance, cure and wages, as a result of his injury. In addition appellee was paid \$15.75 repatriation bonus for his voyage from Honolulu to San Francisco.

Some conflict appears in the testimony of appellee and the claims attorney as to what the consideration was for the \$150 paid appellee over and above the July wages due him.

Appellee testified it was for the bonus which he would have received had he been able to remain on the "Mission Soledad" when it proceeded from Pearl Harbor to a war zone. The claims attorney testified that appellee stated he should have something for his injury and was given \$150 in settlement of such claim.

Appellee further testified that "they" would not pay him his wages until he had "signed some papers". The claims attorney denied this. It is however undisputed that the claims attorney did not inform appellee that he might have a cause of action against the operators of the vessel if he [fol. 325] could prove negligence of a fellow servant. He told appellee that the latter was entitled, as a matter of

law, to his wages from the time he left the vessel until his arrival in the United States or the end of the voyage, whichever terminated first, unless he was still disabled, in which case he could have wages during the full period of the voyage.

The attorney testified that he did not tell appellee he should have medical or legal advice because he believed appellee's statement that he was fully recovered, since appellee appeared normal in all respects.

The claims attorney had before him, during his interview with appellee, the abstract from the clinical record of hospital and outpatient service furnished appellee in Honolulu indicating appellee had been hospitalized five days and that he was "not fit for duty for an indefinite period Fit for travel". The attorney also had before him the ship's report of the accident signed by the purser indicating that appellee had been injured when one of the sailors cast off a block caught on a davit, and that this block had hit appellee.¹¹

He testified that despite this report from the purser he did not tell appellee the latter had a possible cause of action against the vessel, although he stated that if he considered everything in the report absolutely accurate and ruled out contributory negligence and other defenses, he would have no doubt appellee would have had a claim against the ship. He was not sure whether or not he had even read this report to appellee. He further testified that appellee stated that he did not know how the accident had occurred.

The claims attorney also testified that he did not, during the interview, consider whether or not appellee was entitled to be furnished transportation from San Francisco back to his port of shipment, and that he had considerable doubt as to whether appellee was entitled to such transportation.

¹¹ This was the document, previously referred to, which was not formally admitted in evidence. The version of the accident in this report was not borne out by the evidence of appellee, but neither this fact nor the fact that the report was not received in evidence at the trial changes the fact that the claims attorney had before him a document which indicated that appellee had a possible cause of action against the ship for negligence.

[fol. 326] After appellee received his check for \$247.10 and signed the release, he returned to his parents' home in San Diego on August 1. His headaches continued and he suffered some dizziness. He was hospitalized by the Public Health Service from August 17 to August 23, and from August 23 to October 1, 1944 he was a patient in a Seaman's Rest Center. Since October 1, 1944 he has lived with his parents, and he has received additional out-patient treatment in Public Health clinics.

A complete medical examination in January 1945 showed appellee suffering from the residual effects of brain concussion with a prognosis for full recovery in 8 to 12 months. At the trial, and after re-examination, the same physician (whose medical testimony is not challenged by appellant) revised his original estimate upward and stated that he thought full recovery would take another 12 to 16 months.

Measured by the yardstick established by the Supreme Court previously quoted from *Garrett v. Moore McCormack*, supra, this release cannot stand because it was not "made by the seaman with full understanding of his rights".

It is true that appellee is undoubtedly considerably more intelligent than an average seaman, but it does not appear that he was versed in medical and legal matters. He had no independent legal advice at all, and his only medical advice, given him three weeks previously, turned out to be incorrect. Seventeen days after signing the release he was hospitalized, and a medical examination six months later revealed his cure would take 8 to 12 months. Ten months later, at the trial, an additional 12 to 16 months were added to this estimate. It would seem that at the time of signing the release appellee had been seriously misled (unintentionally of course) by medical advice on which he had a right to rely.

The case of *Bay State Dredging Co. v. Porter*, 153 F. 2d, 827, CCA 1st, contains language peculiarly appropriate to this case:

“ . . . bearing in mind that the insurance agent was negotiating with a seaman who was without benefit of counsel, we think the agent was under an obligation to bring home to the plaintiff an understanding of the rights he was giving up in exchange for the settlement offered. . . . [fol. 327] At the very least he should have been told that

he had an unbeatable right of action . . . for maintenance and cure not dependent on proof of negligence; and that in addition he had, under the Jones Act, a right to maintain an action at law for damages for injuries resulting from the negligence of any of the officers or employees of the defendant. . . . Admittedly the agent made no such disclosure to the plaintiff. Defendant utterly failed to lay the necessary factual foundation upon which the validity of the release could have been submitted . . . to the jury." (Emphasis supplied). 153 F. 2d, 833-34.

In *Boniei v. Standard Oil Co.*, 103 F. 2d, 437, CCA 2nd, cert. den., 308 U. S. 560, and *Stuart v. Alcoa S. S. Co.*, 143 F. 2d, 178, CCA 2nd, the actions of the trial judge in setting aside seamen's releases were sustained on the ground that, as in the present case, the injury later turned out to be more serious than was thought at the time the release was signed, and because "the seaman signed the release because of the diagnosis made by the shipowner's doctor." (143 F. 2d, 179)

In *Sitchon v. American Export Lines, Inc.*, 113 F. 2d, 830, CCA 2nd, cert. den. 311 U. S. 705, relied on by appellant, the seaman was represented by an attorney of his own choice, and he signed the release involved there upon the advice of his counsel. He had previously been examined and treated by doctors "entirely independent of defendant". There the release was upheld, the Second Circuit Court of Appeals quite properly saying:

"If such a settlement as the one in the case at bar is voidable, no release by a seaman could ever be free from attack, if he subsequently discovered that his injuries were greater than he anticipated when executing the release." 113 F. 2d, 832.

Appellant contends that even if appellee had consulted an attorney he could only have been advised that he had (1) a cause of action for damages provided he could prove negligence; (2) wages to the termination of the voyage provided his disability outlasted the voyage; and (3) maintenance until he recovered or reached a stage when medical treatment would not improve him. Appellant then argues that because appellee felt he was fully recovered on July 31, 1944, an attorney could only advise him that he might sue for damages hoping to prove negligence or settle

[fol. 328] and that \$150 was a fair settlement for his injuries.

We cannot agree. The most probable first step any competent attorney would take would be to advise appellee to consult a physician, rather than taking appellee's statement that he was fully recovered. And, since the Public Health Service ordered appellee hospitalized 17 days later, we cannot say with any degree of certainty that a doctor would have found appellee fully recovered on July 31.

III

It is conceded that if the release is set aside, appellee is entitled to wages to the end of the voyage. The District Court allowed appellee these wages in the sum of \$480.17. Appellant does not dispute this sum as the correct allowance for wages, but contends that the total should be reduced by the applicable withholding and social security tax deductions. In view of our decision in *Reskusich v. City of Avalon*, 156 F. 2d, 500, we think appellant's point is well taken.

Appellant also challenges the District Court's award to appellee of (1) increased maintenance to appellee during the 18 days he spent out of the hospital in Honolulu; (2) maintenance from July 30 to August 1, 1944, (the period after appellee reached San Francisco, and before he arrived at his home); and (3) travel allowance from San Francisco to San Pedro, California, his port of shipment.

We think the first two of these awards were proper. As to the first, there is some evidence to sustain the finding that appellee's maintenance in Honolulu cost him \$3.50 per day rather than the \$2.00 per day previously paid him by appellant, and in the absence of a contrary showing, we are not inclined to disturb this award. As to the second item, appellant denies liability for maintenance during these three days on the ground that appellee was fully recovered then and hence not entitled to any maintenance. The evidence is to the contrary.

The propriety of the travel allowance presents a different question in view of the fact that the shipping articles signed by appellee provided that War Shipping Administration Transportation Rider No. 64 should be included in [fol. 329] the contract. This rider required that transportation should be furnished a seaman to his port of ship-

ment, when the vessel on which he sailed returned to a United States Port in an "area . . . other than the area . . . in which is located the port of shipment"

Legal Bulletin No. 52 of the War Shipping Administration, a "Repatriation Chart for Seamen . . . separated in Foreign Ports from American Flag vessels", cited by appellee, states the general rule that a seaman injured in the service of his vessel in a foreign port is entitled to be returned to his port of shipment¹² if the repatriating vessel lands him in a different United States continental port.

Legal Bulletin No. 52, however, then goes on to provide:

"A seaman [injured in the service of his vessel] is not entitled to transportation under the rider contained in Operations Regulation No. 64, since the rider contained therein provides for transportation only in the case of a crew member who joins a vessel in the continental United States and returns on the same vessel. No crew member who is separated from his vessel abroad for any reason, or who signs on a vessel abroad for return to this country, is entitled to transportation by virtue of the rider."

This interpretation by the administrative agency which drafted the rider, not only carries great weight but also accords with our view that because the rider operated as a restriction on the seaman's right, under the general maritime law, to be repatriated to his port of shipment under all circumstances, a seaman who cannot bring himself within the terms of the rider is not entitled to a travel allowance back to his port of shipment when he is returned to some other United States port. Here appellee was covered by Rider No. 64, but because he was separated from his vessel abroad and returned to the United States on a different ship he cannot bring himself within the provisions of that rider authorizing transportation back to his port of shipment and is not entitled to travel expenses from San Francisco to the port of Los Angeles.

¹² See, "The Hawaiian", 33 F. Supp., 985, D. Ct., Md.; Miller v. U. S., 51 F. Supp. 924, D. Ct., S. D. N. Y.

IV

Appellee has filed a cross-appeal and a motion to take further proof both of which are based on the contention that [fol. 330] appellee is entitled to maintenance during the time he lived with his parents. Appellee has, with the exceptions previously noted of time spent in Government hospitals and rest centers, lived with his parents from August 1, 1944, to the time of trial here.

His only attempt to show that he had incurred any liability for his maintenance during this period was his testimony that he "felt an obligation to repay" his parents, and that he had used his own money which he approximated at \$600 on his maintenance.

However, other testimony by appellee negatives these statements since, when asked "who paid for your room and board", appellee answered that his father and mother "stood the expenses", and appellee later admitted that all his food was "supplied", in addition to his room, laundry, and other necessary services.

Appellee further testified that he used money "he had borrowed" from his parents "to help pay the food and what little entertainment was offered me". We cannot understand this statement. If the parents furnished the food it seems improbable that he would borrow money from the parents to pay the parents. Furthermore, he makes no segregation between the amount expended for food and the amount expended for entertainment.

We think appellee was furnished his *necessary* living expenses without cost to himself and without liability to his parents. Under §§ 206 and 210 of the California Civil Code appellee's parents are required to maintain him to the extent of their ability since he was without funds and unable to maintain himself and they are not entitled to compensation for this required support "in the absence of an agreement therefor". No such agreement having been shown, appellee has failed to establish that he had incurred any expense or obligation for necessary maintenance while he lived with his parents and, hence, cannot receive maintenance for that period. The Bayhead, 88 F. 2d, 144, CCA 9th; Field v. Waterman S. S. Corp., 104 F. 2d, 849, CCA 5th; The Point Clear, 33 F. Supp., 93, D. Ct., S. D. Cal.

Appellee cites our decision in Reskusich v. City of Avalon, 156 F. 2d, 500, CCA 9th, but there the record clearly

shows that the libellant paid for his room and board while he was unable to work.

[fol. 331] Appellee refused hospitalization in the Marine Hospital in San Francisco because "I couldn't see going back to another hospital. It was just one doctor's opinion against a half dozen or more that I had seen already.

It appears to be well settled that a seaman's right to maintenance and cure is forfeited by voluntary rejection of hospital care.¹³

Here the refusal of the proffered hospitalization came "shortly after" appellee had been discharged from the rest center and had returned to his home. It thus appears that the greater part of the period for which he now claims maintenance is made up of time spent living with his parents after he had declined an offer of a physician to send him to a Marine Hospital for treatment which might have hastened his recovery.

Appellee's motion to take further proof in support of his claim for maintenance for the period since the trial in the District Court, during which time appellee has continued to live with his parents, is denied.

The decree of the District Court is ordered modified so as to conform to this opinion and as so modified the judgment is affirmed.

(Endorsed:) Opinion. Filed Mar. 24, 1947. Paul P. O'Brien, Clerk.

¹³ Bailey v. City of New York, 153 F. 2d, 427, CCA 2;

Meyer v. U.S., 112 F. 2d, 482, CCA 2;

See, Calmar S.S. Co. v. Taylor, 303 U. S. 525, 531; and

Van Camp Sea Food Co. v. Nordyke, 140 F. 2d, 902, CCA 9; cert. den. 322 U. S. 760.

[fol. 332] UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 11378

UNITED STATES OF AMERICA, Appellant,

vs.

ROBERT C. JOHNSON, Appellee

ROBERT C. JOHNSON, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

DECREE

Appeals from the District Court of the United States
for the Southern District of California, Central Division

This cause came on to be heard on the transcript of the
Record from the District Court of the United States for
the Southern District of California, Central Division, and
upon motion of appellant Johnson to take further proof
and was duly submitted.

On consideration whereof, it is now here ordered, ad-
judged, and decreed by this Court, that the motion to take
further proof be, and hereby is denied, and that the final
decree of the said District Court in this cause be, and
hereby is, modified so as to conform to the opinion of this
Court, and as so modified the said decree be, and hereby
is affirmed.

(Endorsed:) Decree. Filed and entered March 24, 1947.
Paul P. O'Brien, Clerk.

[fol. 333] UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 11378

UNITED STATES OF AMERICA, Appellant,

vs.

ROBERT C. JOHNSON, Appellee

ROBERT C. JOHNSON, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE
38 OF THE REVISED RULES OF THE SUPREME COURT OF THE
UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing three hundred and thirty-two (332) pages, numbered from and including 1 to and including 332, to be a full, true and correct copy of the entire record, excluding certain original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, Johnson, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 1st day of May, 1947.

Paul P. O'Brien, Clerk. (Seal.)

[fol. 334] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3125)

FILE COPY

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FILED

JUN 18 1947

CHARLES ELMORE DROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No.

102

133

ROBERT C. JOHNSON,

*no brief filed
on merits for*

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT**

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INDEX

	PAGE
Petition	1
Summary Statement of Matter Involved	1
Negligence	1
The Release	5
Maintenance on Cure	6
Wages, bonus, repatriation	8
Basis of Court's Jurisdiction	8
Questions Presented	9
Reasons Relied upon for Allowance of Writ	10
Brief in Support of Petition	15
Opinion of Court below	15
Specification of Errors	15
Argument	
POINT I—The Circuit Court misconceived and misapplied the law of <i>res ipsa loquitur</i> as stated in the applicable decisions of this court	20
POINT II—The right to maintenance and cure is not forfeited by circumstances showing acquiescence by Public Health Service Officials in out patient treatment and care at home	26
POINT III—The Circuit Court erred in disregarding the findings of fact of the lower Court on the question of negligence	31
(a) In following the rule of review of testimony by deposition	31
(b) In failing to find plain and manifest error in the findings of fact	33
(c) In failing to hold respondents under the duty of coming forward with information as to the happening of the accident	34
(d) In holding that libellant's failure to put in evidence the deposition of respondents' witness was fatal to libellant's case	34

(e) In ignoring the admission of respondents' proctor made at the time of trial and before the Court as to the circumstances of the injury	35
Conclusion	36

CASES CITED

Arizona v. Anelich, 298 U. S. 110 (1938)	25
Best v. Dist. of Columbia, 291 U. S. 411, 415 (1934) ..	14, 36
Calmar S. S. v. Taylor, 303 U. S. 525, 531 (1938) ..	12, 27, 31
City of Cleveland v. McIver, 109 F. (2d) 69 (1940) ..	13
City of N. Y. v. Nat'l Bulk Carriers, 138 F. (2d) 836 (1943)	12
Commercial Molasses Corp. v. N. Y. Tank Barge Corp., 314 U. S. 104, 11 (1941)	10, 13, 23, 34
Cortes v. Baltimore Insular Line, 287 U. S. 367, 371 (1932)	27
Erie R. Co. v. Kane, 118 Fed. 223 (1902)	13, 35
Fauntleroy v. Argonaut S. S. Line, Inc., 27 F. (2d) 50 (1928)	11, 23, 26
Hardin v. Gordon, 2 Mason 541, 11 Fed. Cases 480, 481, Case No. 6047 (Cir. Ct., Dist. Mass., 1823) ..	26, 29
Iowa Cent. Ry. Co. v. Hampton Elec. Lt. & Power Co., 204 Fed. 961 (1913)	13, 35
Jesinowski v. Boston & Maine R. R., 91 L. Ed. Adv. Opin. 335 (decided Jan. 13, 1947)	10, 20, 24
Johnson v. Andrus, 119 F. (2d) 287 (1941)	12
Johnson v. Griffiths S. S. Co., 150 F. (2d) 224 (1945) ..	11, 23
Johnson v. Kosmos Portland Cement Co., 64 F. (2d) 193 (1933)	13
Leathem Smith-Putnam Nav. Co. v. Osby, et al., 79 F. (2d) 280 (1935)	11, 13
Mahnich v. Southern S. S. Co., 321 U. S. 96, 98 1943 ..	32
Moyle v. National Petroleum Transport Corp., 150 F. (2d) 840 (1945)	12, 27
Oscanyan v. Winchester Repeating Arms Co., 103 U. S. 261 (1880)	14, 35

Pacific S. S. Co. v. Peterson, 278 U. S. 130, 135 (1928)	12, 27
Pendleton v. Benner, 246 U. S. 353, 354 (1917)	32
Reed v. Canfield, 20 Fed. Cases 426 Case No. 11641 (Cir. ⁹ Ct., Dist. Mass. 1832)	12, 30
Rey v. Colonial Nav. Co., 116 F. (2d) 580 (1941)	12, 27
San Juan Lt. & Transit Co. v. Requena, 224 U. S. 89 (1912)	23
Schnell, et al. v. The Vallescura, 293 U. S. 296, 302 (1934)	13, 33
Seas Shipping Co. v. Sieracki, 328 U. S. 85, 125, 91 (1945)	23
Smith v. U. S., 96 F. (2d) 976 (C. C. A. 5, 1938)	20
The Balsa, 10 F. (2d) 408 (1926)	12, 31
The Bouker No. 2, 241 Fed. 831 (1917)	12, 29, 31
The Cleary Bros., No. 61, 61 F. (2d) 393 (1932)	12, 32
The Elkton, 35 F. (2d) 49, 52 (D. C., E. D. N. Y., 1929), aff'd 49 F. (2d) 700 (C. C. A. 2, 1931)	13, 35
The Ernest F. Meyer, 84 F. (2d) 496, 501 (C. C. A. 9, 1936)	31, 32
The Meton, 62 F. (2d) 825 (C. C. A. 5, 1923)	10, 25
The Yamachichi, 74 F. (2d) 977 (1935); 103 A. L. R. 768 and anno. at page 775	12

STATUTES, ETC.

Judicial Code, Sec. 240 (a) as amended, Title 28 U. S. C. A. sec. 347 (a)	8
Jones Act, June 5, 1920, C. 250, sec. 33, 41 Stat. 1007, Title 46, U. S. C. A., sec. 688	8, 26
Employers' Liability Act, 45 U. S. C. A. Section 53	26
Public Health Service Act, 42 U. S. C. A. 249 (a), 249 (a) (1), 249 (e)	27, 29
Deering Civil Code of California, Sections 206, 210	29
The Shipowner's Liability Convention of 1936, 54 Stat. 1693, Benedict on Admiralty, 6th Ed., Vol. 6, p. 294	30
Joint Resolution of Congress, 48 Stat. 1182	30
Code Federal Regulations, 1939, Title 46, Chap. I, Sections 43.85, 43.86	25

IN THE
Supreme Court of the United States

OCTOBER TERM, 1946

No. :

ROBERT C. JOHNSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT**

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Robert C. Johnson, able-bodied seaman, for a writ of certiorari to review the decree of the Circuit Court of Appeals for the Ninth Circuit, entered on the 24th day of March, 1947, modifying a judgment in his favor for \$16,549.48 damages for personal injury, wages, maintenance and cure, entered March 8, 1946, by the District Court of the United States for the Southern District of California, Central Division, by eliminating the item of damages (\$16,245.77), and train-fare home (\$22.50), respectfully shows:

Summary Statement of Matter Involved

The negligence. Robert C. Johnson signed on the S. S. "Mission Soledad", a steam tanker, as an able-bodied sea-

man, on the 25th day of March, 1944, for a voyage westward from the port of Los Angeles, California, not to exceed twelve months and return to the United States. The operators of the vessel named in the shipping articles were "War Shipping Administration, Pacific Tankers, Inc., General Agents" (R. 151, 279) under Service Agreement Form G. A. A., Contract WSA 4942" (R. 32, 16, 10). Johnson's base pay was \$107.50 per month (R. 61).

On the 30th day of June, 1944, Johnson was on board the S. S. "Mission Soledad" in Pearl Harbor, T. H., making the ship ready to go to sea, lowering the boom on the port side forward (R. 61). It was about 9 or 9:30 o'clock in the morning (R. 111).

Fore and aft guy lines steadied this boom while in position over the side of the ship and Johnson was working on the after guy line. One end of the after guy line was attached to the outer end of the boom and the other end of the guy line was fastened to the deck. The guy line was made up of two blocks or pulleys and two double-sheave lines, and a wire rope or penant leading from the forward block to the outer end of the boom. The boom had been brought forward and cradled (R. 62), the cradle being alongside the forward gun tube, as shown in Libelant's Exhibit 7 (R. 90, 91).

A "Maccano" deck had been erected on the main deck of the S. S. "Mission Soledad." This was a structure of beams, the composition of which is shown in a series of photographs introduced by the libelant as Exhibits 1-4 and 6-13, inclusive (R. 306). Counsel for the respondent stated that he had no objection to the pictures being offered for the purpose of showing the structure and particular layout of the "Mission Soledad" (R. 64). This "Maccano" deck was a superficial deck built about the deck cargo (R. 102).

The lower block of the after guy line had been unshackled from the deck, had been lifted to the top of the

"Maccano" deck and there straightened out in line with the tip of the nested boom so that the lines would run free while taking in the slack (R. 101). The ropes between the lower and upper blocks were then lying over the second and third athwartship beams of the "Maccano" deck (R. 109).

Johnson was on the main or well deck taking in the slack and bringing the two blocks of the after guy line together. He was assisting the quartermaster, named Dudder (R. 264, 210), who was above him on one of the fore and aft beams of the "Maccano" deck (R. 102).

Dudder was on a single beam, midway between the third and fourth athwartship beams, counting aft from the forecandle (R. 103), while Johnson was on the well deck below him and in front of him or just aft of the third athwartship beam (R. 105).

The slack line, which Johnson was coiling, ran first through the forward or upper block, then through the after block, then through the upper block again and then back to the after block where it was fastened (R. 106). The after block, which had been unshackled and lifted to the "Maccano" deck, Dudder carried in his hands (R. 107).

Between the first and second athwartship beams, that is, forward of both Dudder and Johnson, and between them and the end of the "Maccano" deck, was a boat davit in a position shown on Libellant's Exhibit 4 (R. 89). From this photograph it appears that the top of the davit extended above the top athwartship beams of the "Maccano" deck. The ropes between the forward and after blocks as they lay on the "Maccano" deck were about three or four feet from this davit (R. 108).

What then happened, we are unable to state here in view of the opinion of the Circuit Court (R. 321), notwithstanding that the facts thereon were stipulated in a pre-

trial conference; the evidence thereon was held admissible by the trial court judge who tried the case; was found as a fact by the second trial judge who made his decision upon the record and made the findings and the decree; was read to Johnson as a statement of what happened, as set forth in Respondent's Exhibit A for identification; and assumed as a fact by respondent's own counsel in a colloquy between Court and counsel before the second trial judge. Our version of what happened will be discussed in the brief in support of this petition.

This is not a mere dispute over the evidence because the respondent offered no evidence with respect to the happening of the accident or the negligence involved. Respondent's only witness was one R. L. Frick, who gave testimony with respect to the respondent's defense of release. The Circuit Court states in its opinion (R. 318), although the fact does not appear in the record of the trial, that the respondents "located Dudder and arranged for his deposition to be taken." The record does show that the libelant's counsel at the trial assumed, without objection, that the deposition of Dudder having been taken as a witness for the respondents, was respondent's deposition and would be offered by the respondents (R. 64, 124).

We can only state here that it was conceded to the Court during the trial that Johnson was struck on the head by a block, that this particular block, at the time of the accident, was being carried by Dudder, and that the block alone weighed between 25 and 35 pounds (R. 124, 125).

As to the nature and extent of the injuries the record shows that the medical testimony takes up a good portion of the record, that the testimony of but one medical witness was taken at the trial, that he was jointly engaged by counsel for both petitioner and respondents (R. 223), and that the opinion of this doctor at the time of the trial,

November 13, 1945, then 15½ months after the injury, was that recovery "will probably take another year or 16 months" (R. 85).

The trial judge held that there was both general and specific negligence, that there was negligence of a fellow servant and also that the doctrine of *res ipsa loquitur* could be applied (R. 295, 296), and found as a fact that libellant was injured when he was struck on the head by a block that was negligently and carelessly dropped by a fellow seamen in the performance of his duties on the S. S. "Mission Soledad" (R. 43). The Ninth Circuit Court of Appeals held that that Court could not infer that Dudder dropped the block rather than having it pulled out of his hands by the libellant or that the circumstances were such as to warrant the inference of negligence (R. 321).

The release. The respondents returned Johnson to the port of San Francisco on July 30, 1944, and the following day, July 31, Johnson reported at the office of the respondent Pacific Tankers, Inc. to get the balance of his wages. There he was referred to the insurance company and to the office of an attorney, Mr. John Black (R. 114, 115, 198). Mr. Black was an attorney who represented the underwriters for the War Shipping Administration (R. 149). In Mr. Black's office he was interviewed by one of Mr. Black's assistants, Mr. R. L. Frick, who stated that he read to Johnson the portion of the Ship's report showing the circumstances of the accident (R. 211).

At the same time, a statement of the injury was prepared by Mr. Frick (R. 177), which was signed by Johnson and read by him on cross examination (R. 132).

Johnson at the same time also signed a release (R. 179, 133, 132), Respondent's Exhibit B (R. 133, 267), which stated that the discharge was for wages as well as damages and maintenance. The consideration therefor was

a payment by check of the Pacific Tankers, Inc., dated July 31, 1944, in the sum of \$247.10 (R. 134, 270), of which \$150 was claimed by respondents to cover the item of damages (R. 289).

Up to the time that Johnson signed his release, he had not been advised as to his physical condition by any doctors since leaving Honolulu, and had not been advised by counsel of his rights (R. 143, 139). The trial court found that the record was clear that no one was present at the time of the signing of the release other than Mr. Frick, who was the legal advisor or assistant legal adviser to the underwriters, and Johnson (R. 188). Mr. Frick did not suggest that Johnson consult a physician or an attorney, or both (R. 199). Mr. Frick had been engaged in this work of adjusting claims for 14 years and handled four or five cases a day, five days a week (R. 196, 197). Both the trial court rendering the decision (R. 289) and the Circuit Court of Appeals (R. 326) held that the release could not stand.

Maintenance and cure. After Johnson signed his release in San Francisco, he left immediately to live with his parents in San Diego. From then on until the trial, except for the time that he was in some Government Hospital or rest home, he lived with his parents or some other relatives. His expenses were paid for by his parents, but Johnson felt an obligation to repay them, being no longer a minor (R. 216). His age at the time of trial was 27 (R. 60). He spent all of his money on his own maintenance, about \$600 (R. 217), and thereafter borrowed from his parents (R. 218).

From the time of the accident and up to the time of trial, Johnson had done no work and did not feel able to do any (R. 149). Petitioner's counsel moved to introduce before the United States Circuit Court on Appeals for the Ninth Circuit evidence of Johnson's continued disability until approximately April of 1947 (R. 310-315). This was denied (R. 316).

At the Public Health Service office in Honolulu, on July 5, 1944 (R. 112, 113, 177), and at the Marine Hospital in San Francisco on July 31 (R. 139), the doctors indicated that hospitalization was not necessary. Thereafter, Johnson was hospitalized at the Marine Hospital at Los Angeles from August 17 to 23 (R. 117) the Public Health Service certificate of discharge from this hospital stating that no further hospitalization was necessary, Libelant's Exhibit 16 (R. 245, 94, 95-98). The treatment at the Los Angeles hospital was followed by a stay at the Seamen's Rest Home at Santa Monica, California, from August 23 to October 1, 1944, *i. e.*, the full six weeks that were allowed anyone at this rest home (R. 117, 118).

Shortly after Johnson's return home from Santa Monica, he consulted a doctor at the Public Health Service office at San Diego and was asked by this doctor if he, Johnson, wanted to go to the Marine Hospital in San Francisco (R. 119). Johnson said that he would rather not go (R. 120), because it was just one doctor's opinion against a half dozen that he had seen already, and that he felt better when he could get away from all noise and just rest and enjoy people that he knew and things he had done (R. 121).

Following out this plan, Johnson did go with his mother to visit relatives at his birth place in Sabinal, Texas, during the first part of October and stayed there until January, 1945 (R. 121, 148). The Public Health office in San Diego told him to go to the Public Health office in Galveston and Johnson did so (R. 122), it appearing from the abstract of the United States Marine Hospital Station at Galveston, Texas (Libelant's Exhibit 20, R. 99, 253), that Johnson was examined there on November 30, 1944, and was advised to enter the Marine Hospital at Galveston, but that he refused to do so, and was then advised to return to his former home at Sabinal, Texas, and live and work on the ranch.

The Circuit Court of Appeals held that Johnson forfeited his right to maintenance and cure by a voluntary rejection of hospital care, stating that he had refused hospitalization at the Marine Hospital in San Francisco (R. 331). Both the trial court (R. 297, 45), and the Circuit Court of Appeals (R. 330), held that Johnson was not entitled to receive maintenance during the period of his disability and while he resided with his parents. The District Court found (R. 45), and the Circuit Court held (R. 328), that Johnson was entitled to maintenance at the rate of \$3.50 per day for 18 days spent at Honolulu after the accident and for three days after his arrival in San Francisco. See Libellant's Exhibit 22 (R. 143, 258).

Wages, bonus, repatriation. The District Court found that Johnson would have earned the sum of \$863.37 as wages upon the S. S. "Mission Soledad" until the voyage terminated, November 14, 1944 (R. 290), but that only \$480.17 of this sum was straight time, and allowed recovery only for this latter sum (R. 44), disallowing the balance representing the bonus that he would have earned, as unauthorized (R. 291). The Circuit Court concurred in this finding (R. 328). The District Court found that Johnson was entitled to recover the sum of \$22.50 as repatriation costs from San Francisco to Johnson's home in San Diego. The Circuit Court also disallowed this item of the recovery on the basis of an administrative interpretation of Rider 64 to the Ship's articles (R. 329).

The Basis of the Court's Jurisdiction

The jurisdiction of this Court is based upon Section 240(a) of the Judicial Code, as amended, Title 28 U. S. C. A. sec. 347(a).

The Federal Statute construed by the Court below, which construction is claimed to be in error in this petition, is The Jones Act (June 5, 1920, C. 250, sec. 33, 41 Stat. 1007, Title 46, U. S. C. A., sec. 688).

The date of the judgment sought to be reviewed is March 24, 1947 (R. 332).

Questions Presented

1. (a) Was there a correct interpretation by the Circuit Court of Appeals of the doctrine of *res ipsa loquitur* as applied in a seaman's case?

(b) Was there a correct application of that doctrine to the facts in this case?

(c) May the respondents, while not introducing any evidence whatever of the accident, draw a legal inference of libellant's negligence from what might have happened if the libellant had acted in a certain way?

(d) Did the Circuit Court adopt the natural and reasonable inference from the undisputed facts?

(e) Were the respondents negligent in failing to provide a safe place in which to work?

2. (a) Did the Circuit Court of Appeals properly interpret the doctrine of maintenance and cure?

(b) May the petitioner be refused maintenance and cure because he preferred, in view of his previous record of hospitalization, not to go from his home in San Diego to San Francisco for another period of hospitalization, but chose rather to go to his old home on a ranch in Texas, reporting while there to the Public Health Service unit in Galveston to which he had been referred and where he was advised as an alternative to stay on the Texas ranch, which alternative he accepted and followed?

(c) May a disabled seaman, not a minor, be refused maintenance and cure because his family cares for him while he is disabled and in an indigent condition?

3. (a) Was the Circuit Court of Appeals justified in disregarding the findings of fact of the District Court as to the negligence of respondents in the absence of a finding of plain and manifest error in those findings?

(b) Was the Circuit Court justified in disregarding the facts of the injury as stated in paragraph 11 of the Purser's accident report, overruling in this respect the Hon. Harry A. Hollzer, who tried the case, and the Hon. Charles C. Cavanah, who decided the case on the record?

(c) Did the Circuit Court rightly determine that the failure of libelant to offer in evidence the deposition of respondent's witness was fatal to libelant's contentions?

(d) Was the Circuit Court justified in failing to accept the facts of the accident as admitted by counsel for the respondents in his argument before the District Court?

Reasons Relied Upon for the Allowance of the Writ

(1) The decision of the Circuit Court of Appeals for the Ninth Circuit in this case on the question of *res ipsa loquitur* is in conflict with the applicable decisions of this Court in

Jesionowski v. Boston & Maine R. R., 91 L. Ed. Adv. Opin. 355 (decided Jan. 13, 1947);

Commercial Molasses Corp. v. N. Y. Tank Barge Corp., 314 U. S. 104, 111 (1941);

and is in direct conflict with the decisions of the Courts of the following circuits dealing specifically with seamen's cases:

Fifth Circuit—

Meton S. S. Co. v. Jensen, 62 F. (2d) 825 (1933);

Fourth Circuit—

Fauntleroy v. Argonaut S. S. Line, Inc., 27 F.
(2d) 50 (1928);

Seventh Circuit—

Leathem Smith-Putnam Nav. Co. v. Osby, et al.,
79 F. (2d) 280 (1935);

Ninth Circuit—

Johnson v. Griffiths S. S. Co., 150 F. (2d) 224
(1945).

The questions of *res ipsa loquitur* presented in this case have not heretofore been decided by this Court, nor, so far as we have been able to find after diligent search, has the Court decided a seaman's case involving *res ipsa loquitur*. These questions should be decided in this case, we submit, for the reasons (1) that a seaman's case is *sui generis* considering the traditional solicitude regard of the Court for the seaman's welfare,—the inferences in his favor being zealously guarded. The libelant in this case had been a seaman for two years before the accident and intended to make seamanship his career (R. 130, 144); and (2) that the circumstances of the accident in this case involving work about a "Maccano" deck erected for deck cargo purposes make the decision in this case of special significance in admiralty and to all seamen.

The law in these seamen's cases of *res ipsa loquitur* has now been left in a state of great confusion by the decision of the Ninth Circuit Court of Appeals, a court of powerful influence in such cases, and is in dire need of a clarifying and authoritative declaration on the subject by this Court.

(2) The Circuit Court of Appeals for the Ninth Circuit, as to the questions of maintenance and cure presented in this case, has decided important questions of Federal law which have not been but should be settled by this Court.

The questions here involved were reserved in the case of *Pacific S. S. Co. v. Peterson*, 278 U. S. 130, 135 (1928) and their existence was noted in the case of *Calmar S. S. v. Taylor*, 303 U. S. 525, 531 (1938).

The decision is also in direct conflict with the decisions of the following circuits:

Second Circuit—

Moyle v. National Petroleum Transport Corp.,
150 F. (2d) 840 (1945);

Rey v. Colonial Nav. Co., 116 F. (2d) 580 (1941);

The Bouker No. 2, 241 Fed. 831 (1917);

Third Circuit—

The Balsa, 10 F. (2d) 408 (1926);

First Circuit—

Reed v. Canfield, 20 Fed. Cases 426 Case No.
11641 (Cir. Ct., Dist. Mass, 1832).

(3) The decision of the Circuit Court of Appeals for the Ninth Circuit in refusing to follow the findings of fact of the District Court on the question of negligence on the part of the respondents and in the absence of a finding of plain and manifest error in those findings, is in direct conflict with the decisions of the following circuits:

Second Circuit—

City of N. Y. v. Nat'l. Bulk Carriers, 138 F. (2d)
826 (1943);

Johnson v. Andrus, 119 F. (2d) 287 (1941);

Third Circuit—

The Cleary Bros., No. 61, 61 F. (2d) 393 (1932);

Fourth Circuit—

The Yamachichi, 74 F. (2d) 977 (1935); 103
A. L. R. 768 and anno. at page 775;

Sixth Circuit—

City of Cleveland v. McIver, 109 F. (2d) 69 (1940);

Johnson v. Kosmos Portland Cement Co., 64 F. (2d) 193 (1933);

Seventh Circuit—

Leathem Smith-Putnam Nav. Co. v. Osby, et al., 79 F. (2d) 280 (1935), cert. den. 296 U. S. 653.

The decision with respect to the propriety of review of the District Court's findings is also submitted to be in conflict with the applicable decision of this Court in *Schnell, et al. v. The Vallescura*, 293 U. S. 296, 302 (1934).

The decision of the Circuit Court that libelant's failure to offer in evidence the deposition of respondent's witness was fatal to libelant's contention of negligence is in direct conflict with the decisions of the following circuits:

Second Circuit—

The Elkton, 35 F. (2d) 49, 52 (D. C., E. D. N. Y., 1929), aff'd 49 F. (2d) 700 (C. C. A. 2, 1931);

Eighth Circuit—

Iowa Cent. Ry. Co. v. Hampton Elec. Lt. & Power Co., 204 Fed. 961 (1913);

Sixth Circuit—

Erie R. Co. v. Kane, 118 Fed. 223 (1902);

and is submitted to be in conflict with the applicable decision of this Court in *Commercial Molasses Corp. v. N. Y. Tank Barge Corp.*, 314 U. S. 104, 111 (1941).

The decision of the Circuit Court in refusing to accept the facts of the accident as stated by counsel for respondents in argument before the District Court judge, who decided the case (R. 299), is believed in direct conflict

with the decisions of this Court as to the admissibility of such evidence:.

Oscanyan v. Winchester Repeating Arms Co., 103 U. S. 261 (1880);
Best v. Dist. of Columbia, 291 U. S. 411, 415 (1934).

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit should be granted.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1946

No.

ROBERT C. JOHNSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT**

Opinions of the Courts Below

The opinion of the Circuit Court of Appeals has not been officially reported at the time this is written, but is printed in the record (R. 317).

The oral opinion of the District Court for the Southern District of California, Central Division, has also not been officially reported, but is printed in the record (R. 289), and the findings of fact and conclusions of law of the District Court are printed in the record (R. 41).

Specification of Errors

(1) The Circuit Court of Appeals for the Ninth Circuit erred in making the following ruling:

"Appellant contends, (1) that there is no evidence to support the District Judge's finding of negligence, and (2) that the doctrine of *res ipsa loquitur* is not here available as a substitute for proof of negligence.

"We think both of these contentions are well taken. As to the first, the only testimony on the subject of negligence is the evidence of appellee who stated that Dudder was carrying the block and walking forward on the meccano deck above, as appellee would pull on the rope. Appellee's evidence does not confirm the unsupported statement in the purser's later report of the accident, and appellee's evidence is at variance with the pre-trial stipulation, since appellee's testimony showed that Dudder was not directly 'above libellant' but was diagonally above him and to his rear. Further, Dudder was not 'removing a block' but was assisting appellee in 'rounding in', i. e., carrying the block forward as appellee pulled free lengths of the line attached to the block, and coiled the line thus accumulated."

(2) The Circuit Court of Appeals erred in making the following ruling:

"It is also said that the doctrine is not applicable unless 'by a process of probable reasoning, the facts and circumstances point out the wrongdoer, the tortious character of his act and exclude other probable causes of the injury'."

(3) The Circuit Court of Appeals erred in making the following ruling:

"The last act remembered by appellee of coiling the rope is not a fact from which we can *infer* that Dudder dropped the block, rather than having it pulled out of his hands by appellee. This becomes more evident when it is remembered that in many concussion cases, lapse of memory antedates the actual injury by short periods of time. The first diagnosis of appellee's injury was a probable mild concussion.

"It must also be borne in mind that the block and tackle on which appellee and Dudder were working is designed for the 'purpose of multiplying force,' . . . and that whatever the force of appellee's pull on the rope that pull was multiplied at Dudder's end of the block by at least three to four times the force exerted by appellee, since there were four lines of rope between the blocks. Thus, if appellee pulled on the free end of the rope with a 25-pound pull, Dudder's end of the block would come along with a pull of at least 71.4 pounds. . . ."

"Under these circumstances, with the actual cause of the accident totally unexplained, we cannot say that the 'facts of the occurrence warrant the inference of negligence' (*Sweeney v. Erving*, supra, note 6, p. 240), or 'that the circumstances were such as to justify a finding' that the accident was the result of appellant's negligence. (*Jesionowski v. Boston & Maine Ry.*, supra)."

(4) The Circuit Court of Appeals erred in making the following ruling:

"We do not think that the falling of a block during a 'rounding in' operation is an accident which is 'ordinarily the result of negligence' such as a derailment in the *Jesionowski* case, supra. No negligence appearing, the awards of general damages for pain and suffering and for anticipated loss of wages are disallowed."

(5) The Circuit Court of Appeals erred in making the following ruling:

"An initial report of the accident on a form filled out by the purser of the vessel indicated that the 'guy block was caught on a davit, one of the men cast it off and line and block fell free striking this sailer on the back of the head' . . ."

"While this report was marked for identification, it does not appear that it was ever formally admitted in evidence."

(6) The Circuit Court of Appeals erred in making the following ruling:

"The case was tried before Judge Hollzer who died after its submission but before deciding the matter. The cause was then submitted on stipulation to another District Judge who decided the matter on the written record and oral argument and without the usual opportunity of a trial judge to see and hear the witnesses. For that reason, and because this is an appeal in admiralty, the findings of the trial court do not come to us encased in their usual armor."

(7) The Circuit Court of Appeals erred in making the following ruling:

"There is no competent evidence that Dudder *dropped* the block or was otherwise negligent in any way. There is in fact, no evidence as to Dudder's activities, appellee having chosen not to use Dudder's deposition, although he is resting his case, so far as negligence is concerned, entirely on the negligence of a fellow-servant. This gap in appellee's case is thus necessarily fatal to his contention."

(8) The Circuit Court of Appeals erred in making the following ruling:

"His only attempt to show that he had incurred any liability for his maintenance during this period was his testimony that he 'felt an obligation to repay' his parents, and that he had used his own money which he approximated at \$600 on his maintenance."

"However, other testimony by appellee negatives these statements since, when asked 'who paid for your room and board', appellee answered that his father and

mother 'stood the expenses', and appellee later admitted that all his food was 'supplied', in addition to his room, laundry, and other necessary services."

(9) The Circuit Court of Appeals erred in making the following ruling:

"We think appellee was furnished his *necessary* living expenses without cost to himself and without liability to his parents. Under Sections 206 and 210 of the California Civil Code appellee's parents are required to maintain him to the extent of their ability since he was without funds and unable to maintain himself and they are not entitled to compensation for this required support 'in the absence of an agreement therefor'. No such agreement having been shown, appellee has failed to establish that he had incurred any expense or obligation for necessary maintenance while he lived with his parents and hence, cannot receive maintenance for that period."

(10) The Circuit Court of Appeals erred in making the following ruling:

"Appellee refused hospitalization in the Marine Hospital in San Francisco because 'I couldn't see going back to another hospital. It was just one doctor's opinion against a half dozen or more that I had seen already.'

"It appears to be well settled that a seaman's right to maintenance and cure is forfeited by voluntary rejection of hospital care."

(11) The Circuit Court of Appeals erred in making the following ruling:

"Appellee's motion to take further proof in support of his claim for maintenance for the period since the trial in the District Court, during which time appellee has continued to live with his parents, is denied."

THE ARGUMENT

POINT I

The Circuit Court of Appeals for the Ninth Circuit wholly misconceived the law of *res ipsa loquitur* as stated in the applicable decisions of this Court and grievously misapplied that law to the facts in this case.

As we see it, the foremost error of the Circuit Court lies in a reading into the law of *res ipsa loquitur* as stated by this Court in the case of *Jesionowski v. Boston & Maine R. R.*, 67 S. Ct. 404 (1947), the law of *Smith v. U. S.*, 96 F. (2d) 976 (C. C. A. 5, 1938), applying to an entirely different situation.

From the *Smith* case the Circuit Court quoted: "by a process of probable reasoning, the facts and circumstances point out the wrongdoer, the tortious character of the act and *exclude other probable causes of the injury*," (emphasis supplied) (R. 320), and proceeded from this beginning to require that the probable reasoning should also exclude any possible inferences from any other conduct which the Court thought that petitioner might have been capable of—specifically, pulling the block from Dudder's hands (R. 321).

As we read the *Jesionowski* case, the law is rather, whether the facts and circumstances of the accident "call for an explanation or rebuttal, not necessarily that they require it; that they make a case to be decided by the jury, not that they forestall the verdict." If this is so, then the District Court was correct in the facts found because respondents offered no evidence whatever as to the cause of the accident.

To reconstruct, then, the facts and circumstances of the accident and enumerate the inferences as warranting the finding of negligence calling for rebuttal or explana-

tion, and to show more clearly wherein the Court erred, there is:

(1) The pre-trial stipulation signed by the proctors for the parties and the Court (R. 36) that "Libelant was performing duties aboard the ship and sustained an injury when a block, which was being removed by a man working above libelant, fell, striking libelant on the back of the head."

(2) The paragraph 11 of the Purser's accident report (R. 210, 263) which respondent's witness, Frick admitted to the Court (R. 204) and also on cross-examination (R. 211) that he read to the libelant on the occasion of the signing of the release, reading as follows:

"A. I said I had the impression that I had read off to him that portion of the report showing the circumstances of the accident."

Q. And your impression was that under No. 11 you read the following then: 'Sailors were stowing the forward port side boom and the guy block was caught on a davit, one of the men cast it off and line and block fell striking this sailor on the back of the head, block causing a large cut on this man's scalp. Five stitches were taken in his head at the Navy Dispensary.' Now with reference to that you now say that your recollection is that you read off at least the part that told how the accident happened?

A. I think I did, as I very often do, in order to get the version as a basis for a statement, I simply say, 'Now, here is the report, is this about the way it happened,' and I read it to him."

(3) A photograph, Libelant's Exhibit 4 in evidence, (R. 89), which shows a davit was three or four feet to the side of the position of the ropes between the forward and after blocks (R. 108), together with Johnson's further testimony that unless the ropes between the two blocks were taut, the rope could not be pulled in (R. 108, 101).

(4) The stipulation that Johnson was coiling the rope when the block hit him, that Dudder had been carrying the block in his hands (R. 125), and that Johnson did not know what it was that struck him (R. 110, 203, 132). As he said (R. 132):

"On June 30, 1944, while the vessel was at Pearl Harbor, Honolulu, at about 8:35 a. m., we were stowing the forward port boom, and while we were doing this I was struck in the head by an object which I was afterwards told by others was a block which I understood was dropped by one of the seamen who was standing above me on one of the cross beams."

Summarizing these circumstances, we have:

(1) With the ropes caught on the davit and therefore not "taut", Johnson could not pull the rope through the block. Moreover the rope itself, it is to be remembered, ran from Johnson's end through the forward block and then back to the after block in Dudder's hands (R. 106). Therefore, as a matter of practical physics, the inferences that Johnson did not pull the block from Dudder's hands are strongly in his favor.

(2) If Johnson was coiling rope when the block hit him, he must have been coiling the free rope that had been accumulated prior to the time that it caught on the davit. It certainly took a little time to get the ropes off of the davit. Therefore, as a pure matter of timing, the inferences that Johnson did not pull the ropes from Dudder's hands are strongly in his favor.

Who it was that removed the block from the davit does not appear in the evidence. The flat statement of the Circuit Court of Appeals, therefore, that "Dudder was not 'removing a block', but was assisting appellee" is a serious error. Although we feel justified, we do not reveal who it was that removed the block.

We do point out, however, how grievous this error is. Without warrant it removes from suspicion the only other person, named as being on the scene (R. 264), and, more important, it clears respondent of the duty of explaining Dudder's conduct,—of rebutting the presumption of negligence on the part of Dudder.

Since Johnson did not know what it was that hit him (R. 110, 203, 133), and while the respondents did have such knowledge (R. 262, 264, 210, 204, 211), it would seem that it was respondents' duty to come forward with the explanation.

Commercial Molasses Corp. v. N. Y. Tank Barge Corp., 314 U. S. 104, 111 (1941);
Fauntleroy v. Argohaut S. S. Line, 27 F. (2d) 50, 51 (C. C. A. 4, 1928).

An earlier decision of the Circuit Court of Appeals for the Ninth Circuit, but a decision by three different judges, in *Johnson v. Griffiths S. S. Co.*, 150 F. (2d) 224, 226, we submit, correctly states in a comparable situation—the finding of an injured man at the bottom of an open hatch—that “in determining proximate cause it is not essential that the causal connection be shown by direct evidence; the causal connection can be shown by facts and circumstances which, in the light of ordinary experience, reasonably suggests that the defendant's negligence in the manner charged operated proximately to produce the injury.”

This is particularly so, we submit, in the case of the seaman who “has been given a special status in the maritime law as the ward of the admiralty, entitled to special protection of the law not extended to land employees.” *Seas Shipping Co. v. Sieracki*, 328 U. S. 85, 125, 91 (1945). The probable reasonable inferences from the circumstances of the seaman's injury should therefore be zealously protected by a court sitting in admiralty.

A further misapprehension and misapplication of the law in *San Juan Lt. & Transit Co. v. Requena*, 224 U. S. 89

(1912), as restated in the *Jesionowski* case, *supra*, occurs in the conclusion of the Circuit Court (R. 322) that

“I do not think that the falling of a block during a ‘rounding in’ operation is an accident which is ‘ordinarily the result of negligence.’ ”

This conclusion overlooks two other aspects of the doctrine of *res ipsa loquitur* as we understand it to have been stated in the *Jesionowski* case, *supra*, to wit (1) exclusive control by defendant of all causative factors, although the plaintiff may have participated in the operation, and (2) proper care on the part of the defendant having control of the causative factors. The Circuit Court entirely overlooks the second aspect.

To show the effect of that error in this case, libelant's proctor took great care to show the particular structure and layout of the “Maccano” deck on the S. S. “Mission Soledad”. Twelve of the thirteen photographs in evidence show this detail of the place where the accident happened.

He was careful to point out that the fore and aft beams of the “Maccano” deck shown in the photographs were different as shown there than on the S. S. “Mission Soledad” in that they were bunched in the photographs to form a catwalk, whereas, on the S. S. “Mission Soledad” they were not so bunched and that they were movable (R. 63, 88, 93), and that Dudder, who carried the block in his hands (R. 107) was walking on a single beam (R. 102, 103, 132, 299). The Purser's report of the accident named but one witness to the accident, to wit, Dudder (R. 264).

We submit that the evidence clearly shows that the libelant was not furnished a safe place in which to do his work; that the operation under the special circumstances shown, although not ordinarily, was extremely hazardous; and that respondents, in discharge of the duty of proper care, should have carefully supervised the operation, which they clearly did not do.

On the contrary, because the free deck space had been taken up by the "Maccano" deck, Dudder was required to mount to the top of one of the beams of the "Maccano" deck and on that beam to support the weight of two 35-pound blocks, the weight of the ropes consisting of four lines of rope between the blocks, each rope about 36 feet in length [Dudder being between the third and fourth athwartship beam and the beams being 12 feet apart (R. 103), and the forward block which was caught on the davit being just aft of the first athwartship beam (R. 108)], plus 30 feet of wire rope or pennant from the forward block to the top of the boom (R. 109, 92).

If the operators of the ship wished to carry a deck cargo and erect the "Maccano" deck to provide for it, it would seem that they should have provided a catwalk on the top beams of the "Maccano" deck with stanchions and ropes or chains for support for the person required to work there.

The regulations of the Bureau of Marine Inspection and Navigation, with specific reference to deck cargoes of timber, show an official recognition of the danger to a ship's operation in the use of such a structure. C. F. R., 1939, Title 46, Chap. I, Sections 43.85, 43.86. No similar regulations with respect to other kinds of deck cargo have been found.

The respondents having had exclusive control of the block, could not possibly have discharged the duty which was upon them of showing proper care or supervision of the operation when the accident happened.

There was no assumption of risk on the part of libellant in working under such conditions, of course. *Arizona v. Anelich*, 298 U. S. 110 (1938).

It is reasonably certain that the factor of reasonable care and supervision which the Circuit Court overlooked could have prevented the happening of this accident.

The Meton, 62 F. (2d) 825 (C. C. A. 5, 1923);

Fawntleroy v. Argonaut S. S. Line, 27 F. (2d) 50
(C. C. A. 4, 1928).

There is instinct in the Circuit Court's opinion, we submit, and adherence to the old common law doctrine of contributory negligence, and a holding of the libelant to the duty of disproving any negligence on his part, notwithstanding that that issue was not raised in the pleadings and was not included in the issues of the trial, as stipulated at the pre-trial conference (R. 39, 40), and that under the *Jones Act*, 46 U. S. C. A. Section 688, which makes applicable the provisions of the *Employers' Liability Act*, 45 U. S. C. A. Section 53, contributory negligence is not a bar to the action.

POINT II

The preference of Johnson for treatment at his old home on a ranch in Texas, acquiesced in by the Public Health Service officials, and his care thereafter by his family, was not such a refusal of maintenance and cure or a showing of lack of necessity therefor as to allow respondents to escape financial reckoning for their contractual duty.

It has been well recognized for over a century in this country that the obligation of a shipowner or operator which is owed to a seaman for his maintenance and cure is contractual in its nature, being a part of the contract for wages and a material increment in the compensation for his labor and services.

Hardin v. Gordon, 2 Mason 541, 11 Fed. Cases 480, 481, Case No. 6047 (Cir. Ct., Dist. Mass., 1823),—"the classic passage by Mr. Justice Story", said the late Mr. Chief Justice Stone in—

Calmar S. S. Corp. v. Taylor, 303 U. S. 525, 527 (1937);

Cortes v. Baltimore Insular Line, 287 U. S. 367, 371 (1932);

Pacific S. S. Co. v. Peterson, 278 U. S. 130, 135 (1928).

How far, then, can a shipowner claim absolution from others for its own contractual duty of maintenance and cure?

First, how far can it substitute the beneficial provisions of the *Public Health Service Act*, 42 U. S. C. A. 249(a), 249(a)(1), 249(e), which provides hospital service to seamen without cost to either the seaman or the shipowner?

It is submitted that here, after repeated visits to the Public Health Service hospitals, it appeared that for Johnson's type of injury only out-patient service was necessary and not extended hospitalization, and it also appeared that the Public Health Service officials acquiesced in Johnson's plan to go to his old home in Texas because, as Johnson said:

"Rest seemed to be the best thing for me. I felt better when I could get away from all noise and just rest and enjoy people that I know and things that I had done" (R. 121).

It is submitted that under such circumstances there is no such refusal of Public Health Hospital Service as to discharge the respondents from liability.

Moyle v. National Petroleum Transport Co., 150 F. (2d) 840 (C. C. A. 2, 1945);

Rey v. Colonial Navigation Co., 116 F. (2d) 580 (C. C. A. 2, 1941).

A tabulation of Johnson's hospital experience appearing in the record shows:

No.	Date	Location of Public Health Service Hospital attended or contacted	Comment on Discharge	Record Page
1944				
1	7/1-6	Honolulu	Released from hospital. Not fit for duty for indefinite period. Fit for travel.	97, 241, 242
2	7/30	San Francisco	"If you don't feel in the need of hospitalization don't come out."	139
3	8/17-23	Los Angeles	"No further hosp. nec."	98, 247, 245
4	8/23-10/1	Santa Monica	"To continue treatment at San Diego U. S. P. H. S."	99, 249, 118
5	10/4-5	San Diego	Advised hospital care and referred to Public Health Service in Galveston.	99, 251, 122
6	11/30	Galveston	"Patient was advised to enter the Marine Hospital in Galveston for observation, but refused to do so. He was then advised of opportunity to enter near-by Rest Center at Kittiwake and also refused to do this. He was then given medication and advised to return to his former home at Sabinal, Texas and live and work on ranch."	99, 253, 254
1945				
7	1/20	San Diego	"Condition of patient on Jan. 20/45 same."	100, 256

The conversation referred to in the Circuit Court's opinion as constituting the refusal was the interview with the Public Health Service doctor at San Diego on October 5th, No. 5 above. The full account of this interview appearing in the record shows that Johnson did not "refuse" to go but stated that he would rather not go (R. 120) and that the office in San Diego told him to go to the Public Health Service in Galveston (R. 122). These facts are submitted

as showing a clear acquiescence in out-patient treatment and rest at Johnson's home.

The limits of cure or care both as to the kind of treatment and time of continuance must always depend on the facts of each particular case. (*The Bouker* No. 2, 241 Fed. 831, 835 (C. C. A., 2, 1917); cert. den. 245 U. S. 647.)

Second. How far can the ship operator substitute for its contractual duty of maintenance and cure the provisions of a State law requiring support of an indigent by members of his family?

The State law in question here is California Civil Code, Section 206, which requires members of a family of a poor person, unable to support himself, to maintain such person to the extent of their ability, but provides that a promise to pay for such service is enforceable. (*Deering's Civil Code of California*, Section 206.) We see no application in Section 10 of the Civil Code to which the Circuit Court also referred.

Section 206 is found under the heading "Parent and Child" and could hardly have been enacted with any idea that in doing so the indigent person was being deprived of a contractual right for his care.

If the *Public Health Service Act*, *supra*, which expressly includes seamen as among those entitled to the benefit of its provisions, does not relieve the ship operators of the contractual duty of maintenance and cure, *a fortiori* a State law, merely a part of the general laws of the State relating to the relation between parent and child, should not exempt them.

Long ago it was urged that the provisions of a predecessor act to the *Public Health Service Act*, *supra*, satisfied the maritime law with respect to maintenance and cure. This was urged in a case before Justice Story ten years after his decision in *Hardin v. Gordon*, *supra*, in the case of

Reed, et al. v. Canfield, 20 Fed. Cases, Case No. 11641 (Cir. Ct., Dist. Mass., 1832), the learned Justice stating, at p. 428:

"It is said that the acts of Congress respecting hospital money and the relief of the sick and disabled seamen provide suitable means for the relief of seamen in the home ports and therefore may be deemed to satisfy the maritime law, even if it reaches to relief in cases like the present. But it appears to me that they are rather to be deemed supplementary to the maritime law."

The *Shipowner's Liability Convention of 1936*, 54 Stat. 1693, Benedict on Admiralty, 6th Ed., Vol. 6, p. 294, proclaimed by the President September 29, 1939, as effective from and after October 29, 1939, contains no such escape hatch as a State law for the shipowner's contractual obligation for maintenance and cure. Article 4 thereof states:

"The shipowner shall be liable to defray the expenses of medical care and maintenance until the sick or injured person has been cured or until the sickness or incapacity has been declared of a permanent character."

Authorization for the United States to join in this Convention was given by Joint Resolution of Congress on June 19, 1934, 48 Stat. 1182.

There are two branches to this second question on maintenance and cure, (1) the existence of the State law just mentioned, and (2) the fact that the maintenance and cure may have been given by the family without an express promise to pay therefor by the indigent.

Although the Circuit Court claims that Johnson did not testify that he expressly promised to pay his parents for his maintenance, Johnson did say that he felt an obligation to repay them, being no longer a minor (R. 216), and that

at some future time he would repay them (R. 217), and that he borrowed money from his parents (R. 218). He testified that he had spent all of the money earned on the ship, about \$600, on his maintenance (R. 217).

The amount of the per diem maintenance here is not in issue, however, as that was expressly stipulated by counsel for the respondent to be at the rate of \$3.50, the liability only being in dispute (R. 220).

The fact that the seaman was cared for by the members of his family does not discharge the shipowner of the obligation to pay for the reasonable cost of the maintenance and cure.

The Bouker No. 2, 241 Fed. 831, 836 (C. C. A. 2, 1917);

The Balsa, 10 F. (2d) 408 (C. C. A. 3, 1926).

It is "the reasonable cost of the maintenance" that was taken by this Court as the measure of the seaman's recovery in *Calmar S. S. Corp. v. Taylor*, 303 U. S. 525, 532 (1938).

POINT III

The Circuit Court erred in refusing to follow the findings of fact of the District Court on the question of negligence.

A. *The Circuit Court erred in following the rule of review of testimony taken by deposition.*

The Circuit Court disregarded the findings of fact of the District Court for the reason that the Trial Judge who presided at the pretrial conference and tried the case died before making his decision, and that the decision in the case was made on the record by another district judge (R. 319). The Circuit Court cited as authority the case of *The Ernest F. Meyer*, 84 F. (2d) 496, 501 (C. C. A. 9, 1936).

The situation in *The Ernest F. Meyer*, however, was entirely different than in the case at bar. There the court brought itself within a rule of law followed by several of the circuit courts that where all or nearly all of the testimony was by deposition, the presumption in support of the findings has slight weight. The court in *The Ernest F. Meyer* stated (p. 501) that "the evidence of all the officers and crews of both vessels * * * is by deposition."

On the contrary it is submitted that this case properly falls within the category of concurrent rules of fact by two Lower courts which are not to be disturbed.

Mahnich v. Southern S. S. Co., 321 U. S. 96, 98 (1943);

Pendleton v. Benner, 246 U. S. 353, 354 (1917).

In petitioner's case, there was no testimony by deposition. The respondents offered no evidence on the subject of negligence. The strongest opposition to libelant's introduction of evidence and the only dispute of importance as to libelant's introduction of evidence came in the introduction of the purser's report (Libelant's Exhibit 25 for identification, R. 210, 262). The important part of this exhibit, however, Paragraph 11, was proven to have been read to the libelant upon the occasion of his signing of the release. This was admitted by respondent's Claim Agent, Mr. Frick, to the court (R. 204), and to the libelant's proctor, upon cross examination (R. 211).

Both the Judge trying the case, Hon. Harry A. Hollzer, and libelant's proctor maintained on the trial that the report was admissible in evidence (R. 206), and over objection of the respondent's proctor that the report was inadmissible as being (1) an unauthorized admission of a fellow servant (R. 204), and (2) a privileged communication (R. 208). The Trial Judge was clearly right in his position. (*The Cleary Bros. No. 1*, 61 F. (2d) 393, C. C. A. 3, 1932.)

The Purser's report explains the pretrial stipulation of fact entered into between proctors for both parties and signed by the Trial Judge to the effect that libelant was injured "when a block, which was being *removed*, by a man working above libelant, fell striking libelant on the back of the head." (Emphasis added) (R. 36).

The Judge making the decision on the record, the Hon. Charles C. Cavanah, reached the same conclusion as did the Trial Judge, Hon. Harry A. Hollzer, because in making his oral decision, Judge Cavanah states (R. 295):

"* * * As I gather from this case, this libelant was on this boat, curling this rope around, and above him this block fell and hit him that was above him; that there was a man above there that was a fellow servant of the working man. That is negligence. If he so operated that block up there that it swung around and struck this man in the head, that is negligence by a fellow servant. * * *

These facts, which mention the operation of the block and the swinging around of the block would seem to relate to the facts as stated in the Purser's report. Thus we have one judge at the trial before witnesses, and another judge upon the record, coming to the same factual conclusion as to the negligence. The Circuit Court ignored these concurrent expressions of opinion on the facts of the negligence by the two lower court judges.

B. The Circuit Court erred in failing to find plain and manifest error in the findings on the facts of negligence.

The Circuit Court should have followed the customary practice of the courts of the majority of the circuits, as shown in the petition for certiorari, *supra*, and the policy as indicated by this Court in *Schnell, et al. v. Vallescura*, 293 U. S. 296, 302 (1934), and sought for plain and mani-

fest error in the District Court's findings of fact before disregarding them. If this had been done, it is believed that there would have been no reversal nor any necessity for this petition to this Court.

C. *The Circuit Court erred in failing to hold respondents under the duty of coming forward with information as to the happening of the injury.*

It is to be remembered that plaintiff offered no evidence of negligence at all and that Johnson did not know what it was that hit him and how he was struck (R. 110, 203, 132). Respondents, on the other hand, did know what happened and how it happened as is borne out by the Purser's report and the respondents' action upon that report (R. 262, 264, 210, 204, 211).

The unfavorable presumption that should have existed therefore, was one against the respondents. (*Commercial Molasses Corp. v. N. Y. Tank Barge Corp.*, 314 U. S. 104, 111 (1941).)

Adopting the reasoning of the case just cited, it was respondents' duty to offer evidence as to how the accident happened for the reason that respondents, being in a better position to know the cause of the injury, were under the duty of coming forward with the information.

D. *The Circuit Court erred in holding that libelant's failure to put in evidence the deposition of respondent's witness was fatal to libelant's case.*

The Circuit Court concluded that the failure of libelant to put in evidence the deposition of Dudder, whose testimony had been taken as a witness for respondent and this deposition made available to the libelant (R. 318) was fatal to respondent's case (R. 319). No authority was cited for this holding and since this information was equally available to both parties, no unfavorable inference should have

been taken against one party any more than against the other party.

The Elkton, 35 F. (2d) 49, 52 (D. C. E. D. N. Y., 1929); affirmed 49 F. (2d) 700 (C. C. A. 2, 1931);

Iowa Cent. Ry. Co. v. Hampton Elec. Lt. & Power Co., 204 Fed. 961 (C. C. A. 8, 1913);

Erie R. Co. v. Kane, 118 Fed. 223 (C. C. A. 6, 1902).

The District Court then was justified on the trial in finding no unfavorable inferences on this ground against the libellant.

E. The Circuit Court erred in ignoring the admission of respondents' proctor made at the time of trial and before the court as to the circumstances of the injury.

The Circuit Court ignored the fact that respondents' proctor in a colloquy between court and counsel occurring just after the District Court had made the decision on the record, made the following admission (R. 299):

"Mr. Fall: There was a stipulation that he dropped it.

Mr. Toner: The idea is, if the court please, that the block was in a horizontal position and the libellant was over here and here was the beam and the man let go of the block, we will say, and it dropped this way. Normally, it would drop straight but the rope to which it was attached ~~was~~ lying over this beam and it swung as in a pendulum.

The Court: Somebody swung it down on him.

Mr. Toner: That was the force of gravity as it fell this way.

The Court: You stipulated he dropped that block from above there and hit this man.

Mr. Fall: The man testified, 'I was coiling lines just before the accident happened.'

The Court: That is all he was doing and this block was up above him.

Mr. Toner: That is true."

These statements of respondents' proctor are admissible in evidence under the decisions of this court (*Oscanyan v. Winchester Repeating Arms Co.*, 103 U. S. 261 (1880)), the power of the court to act upon the facts conceded by counsel being as plain as its power to act upon evidence produced (*Best v. Dist. of Columbia*, 291 U. S. 411, 415 (1934).)

Conclusion

We respectfully submit that the decision of the Ninth Circuit Court of Appeals in this case is in conflict not only with the decisions of this Honorable Court but with the decisions of the majority of the circuit courts where these questions have arisen, and that the uniformity of the admiralty law and the certainty of its application is therefore seriously threatened; that the questions presented in this petition are of extreme importance and wide application to seamen; and that the writ of certiorari should be granted in this case in order that the questions presented herein may be clarified and settled by this Honorable Court.

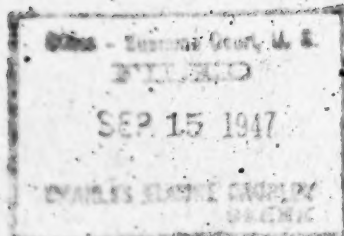
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FILE COPY



No. 138

In the Supreme Court of the United States

OCTOBER TERM, 1947

ROBERT C. JOHNSON, PETITIONER

v.

THE UNITED STATES

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT**

BRIEF FOR THE UNITED STATES IN OPPOSITION

INDEX

	Page
Opinions below.....	1
Jurisdiction.....	1
Questions presented.....	2
Statutes involved.....	2
Statement.....	3
Argument.....	9
Conclusion.....	17

CITATIONS

Cases:

<i>Adriadne, The</i> , 13 Wall. 475.....	11
<i>Atchison, T. & S. F. Ry. Co. v. Toops</i> , 281 U. S. 351.....	11
<i>Bailey v. City of New York</i> , 153 F. 2d 427.....	15, 17
<i>Bouker No. 2, The</i> , 241 Fed. 831, certiorari denied, 245 U. S. 647.....	15
<i>Calmar S. S. Corp. v. Taylor</i> , 303 U. S. 525.....	15, 17
<i>Carroll v. Moran T. & T. Co.</i> , 88 F. 2d 144.....	17
<i>Commercial Corp. v. N. Y. Barge Corp.</i> , 314 U. S. 194.....	9
<i>Cummins v. Wry</i> , 10 F. 2d 408.....	15, 17
<i>Delaware & C. R. R. v. Koske</i> , 279 U. S. 7.....	11
<i>Ernest H. Meyer, The</i> , 84 F. 2d 496, certiorari denied, 299 U. S. 600.....	11
<i>Fauntleroy v. Argonaut S. S. Line, Inc.</i> , 27 F. 2d 50.....	10
<i>Field v. Waterman S. S. Corp.</i> , 104 F. 2d 849.....	17
<i>Jesionowski v. Boston & Maine R. Co.</i> , 329 U. S. 452.....	9, 10
<i>Johnson v. Griffith S. S. Co.</i> , 150 F. 2d 224.....	10
<i>Leathem Smith-Putnam Nav. Co. v. Osby</i> , 79 F. 2d 280.....	10
<i>Mahnich v. Southern S. S. Co.</i> , 321 U. S. 96.....	11
<i>Marshall v. International Mercantile Marine Co.</i> , 39 F. 2d 551.....	15
<i>Matson Nav. Co. v. Pope & Talbot</i> , 149 F. 2d 295, certiorari denied, 326 U. S. 737.....	11
<i>Melton S. S. Co. v. Jensen</i> , 62 F. 2d 825.....	10
<i>Meyer v. United States</i> , 112 F. 2d 482.....	15
<i>Moyle v. National Petroleum Transport Corp.</i> , 150 F. 2d 840.....	16
<i>Panama R. R. Co. v. Johnson</i> , 264 U. S. 375.....	9
<i>Rey v. Colonial Navigation Co.</i> , 116 F. 2d 580.....	16
<i>Robinson v. Swayne & Hoyt</i> , 33 F. Supp. 93.....	17
<i>San Juan Light Co. v. Requena</i> , 224 U. S. 89.....	10
<i>Santa Barbara, The</i> , 263 Fed. 369.....	15
<i>Stewart v. United States</i> , 25 F. 2d 869.....	15

II

Cases—Continued

	Page
<i>Stokes v. United States</i> , 144 F. 2d 82.....	11
<i>Sweeney v. Erving</i> , 228 U. S. 233.....	10, 14
<i>Van Camp Sea Food Co. v. Nordyke</i> , 140 F. 2d 902.....	15
<i>Waterman S. S. Corp. v. United States S. R. & M. Co.</i> , 155 F. 2d 887, certiorari denied, 329 U. S. 761.....	11
 Statutes:	
Federal Employers' Liability Act, Act of April 22, 1908, Sec. 1, 35 Stat. 65, as amended, 45 U. S. C. 51.....	3
Jones Act, Act of March 4, 1915, Sec. 20, 38 Stat. 1185, as amended, 46 U. S. C. 688.....	2

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OPINIONS BELOW

The findings of fact and conclusions of law (R. 41-46) of the District Court of the Southern District of California, Central Division, are not reported. The oral opinion of the District Court appears in the record at pp. 289-302. The opinion of the Circuit Court of Appeals for the Ninth Circuit (R. 315-329) is reported at 160 F. 2d 789.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 24, 1947 (R. 330). The petition for writ of certiorari was filed on June

18, 1947.¹ The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the court below erred in holding that, in the particular circumstances of this case, the doctrine of *res ipsa loquitur* could not serve as a basis for sustaining petitioner's claim for damages under the Jones Act.

2. Whether both courts below erred in holding that, as a factual matter, petitioner was not entitled to recover the maintenance and cure here involved.

STATUTES INVOLVED

The Jones Act, Act of March 4, 1915, Sec. 20, 38 Stat. 1185, as amended by Sec. 33 of the Act of June 5, 1920, 41 Stat. 1007, 46 U. S. C. 688, provides in pertinent part:

Any seaman who shall suffer personal injury in the course of his employment may, at his election maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply * * *

¹ Service on the Government of the record was not made until August 11, 1947. Thereafter, certain photograph exhibits referred to in the petition were, at the Government's request, forwarded from the United States District Court for the Southern District of California, Central Division, to this Court and were received on August 22, 1947.

The Federal Employers' Liability Act, Act of April 22, 1908, Sec. 1, 35 Stat. 65, as amended by the Act of August 11, 1939, 53 Stat. 1404, 45 U. S. C. 51, provides in pertinent part:

Every common carrier by railroad while engaging in commerce between any of the several States or Territories * * * shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce * * * for such injury * * * resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment. * * *

STATEMENT

This suit was instituted by a libel filed by petitioner on November 13, 1945, in the United States District Court for the Southern District of California, Central Division (R. 1-8). Petitioner alleged that, while employed as a seaman on the S. S. *Mission Soledad*, he was struck on the head and injured by a block which was " * * * negligently and carelessly dropped by a fellow seaman * * * " (R. 5). He sought damages under the Jones Act, *supra*, as well as compensation for loss of wages, maintenance and cure (R. 9). Respondents answered (R. 9-15), alleging, *inter alia*, that they were ignorant of the cause of the injury and demanded proof thereof (R. 12). A

pretrial stipulation was entered into (R. 35-40), and the case was tried before Judge Hollzer (R. 58). Judge Hollzer, however, died after submission of the case on oral argument and briefs but before decision (R. 49), and by stipulation of the parties, the case was submitted on a transcript of the record to Judge Cavanaugh (R. 49). The facts may be briefly summarized as follows:

On March 25, 1944, petitioner, aged 26, signed on as an able-bodied seaman on the S. S. *Mission Soledad*, a steam tanker owned and operated by the United States (R. 35-36). On June 30, 1944, while the S. S. *Mission Soledad* was at Pearl Harbor, T. H., being prepared for a voyage, and after the portside forward boom had been cradled, petitioner, together with a fellow seaman named Dudder, was engaged in rounding in the block by means of which the boom had been operated (R. 61-62).

When a boom is in use over the side of the ship, it is steadied and manipulated by guy lines and block and tackle (R. 62). One block is attached to the boom, the other block is fastened to the deck (R. 62). When the boom is cradled, the deck block is unfastened, and the lines between the blocks are then hauled in until the blocks are actually touching (the nautical term is "chock a block"). Here, petitioner was standing on the main deck, beneath the meccano² deck,

² A framework of steel posts and beams built above the main deck in order to carry deck cargo.

aft of the third thwartship beam (R. 105). He was hauling the line from the boom block and coiling it (R. 61, 107). Dudder was on the meccano deck, holding the unfastened deck block and moving toward the boom block as petitioner rounded in the line (R. 102, 107). As Dudder carried the deck block, he kept the lines between the blocks taut to prevent fouling (R. 101, 108). Petitioner, hauling and coiling the line, controlled the rate at which Dudder carried the detached block (R. 107). When petitioner last noticed Dudder, the latter was about six feet aft of the third thwartship beam (R. 103). Petitioner's last recollection of the rounding in operation was bending over and coiling line (R. 110). The block carried by Dudder fell and, swinging on the lines between it and the boom block with the third thwartship beam acting as a fulcrum, struck petitioner on the back of the head.

Petitioner was taken by ambulance to the emergency hospital at the Naval Base and, after receiving first aid, was sent back to the ship where he remained overnight (R. 36, 111). On the following day, he was examined by a U. S. Public Health Service surgeon and was hospitalized for the next four days at the Queen's Hospital, Honolulu (R. 36, 112, 241-242). He was discharged from the hospital on July 5, 1944 (R. 112, 242). The Public Health Service record showed that, although there had been marked improvement in his condition and he was fit for

travel, he was not fit for duty (R. 242). He was returned to San Francisco on another ship, arriving on July 30, 1944, and proceeding to his parents' home at San Diego (R. 114, 116).³ On August 17, 1944, he was examined by U. S. Public Health Service doctors at Los Angeles and was hospitalized at the Marine Hospital until August 23, 1944, at which time he was sent to the Pacific Palisades Seamen's Rest Center (R. 117, 245). He remained at the Rest Center until October 1, 1944, when in accordance with its rules limiting stays to a maximum of six weeks, he was discharged (R. 118).⁴ He testified that he still had the "same old ailments" (R. 118) and, upon returning home, he went to bed for several days (R. 119).⁵

³ On July 31, 1944, petitioner went to the office of the attorneys for the underwriters of the vessel, where he was paid \$247.10, and he signed a release in full (R. 115-116, 33-34). The courts below set aside the release (R. 45-46, 289, 321-326), and there is no question raised in regard thereto.

⁴ There is no question here presented as to wages to the end of the voyage, or maintenance and cure until October 1, 1944, when petitioner was discharged from the Pacific Palisades Rest Center.

⁵ The medical report of the Rest Center stated that petitioner complained of headaches and other nervous symptoms, including a fear that he might become a psychiatric patient (R. 249-250). That fear apparently was aggravated by visits of his father, who "in his anxiety was apt to be very critical and expressed the wish to collect greater damages" (R. 250). The Rest Center made a prognosis of "good" and recommended continued treatment at the U. S. Public Health Service at San Diego (R. 250).

On October 4 and 5, 1944, petitioner was furnished outpatient care by the U. S. Public Health Service in San Diego (R. 119, 251-252). The Public Health Service doctors advised hospital care and offered to send him to the Marine Hospital at San Francisco (R. 251, 119-120). Petitioner declined, saying that he would rather not (R. 120), "because, to my reasoning, after being in two hospitals and a rest center, if they couldn't find out what was the matter, why, I couldn't see going back to another hospital. It was just one doctor's opinion against a half dozen or more that I had seen already" (R. 121). He apparently told the Public Health Service officials in San Diego that he intended taking a trip to Sabinal, Texas, to visit the ranch of relatives, and was advised by these officials that "when in Texas" there was a Public Health Service Office in Galveston which he could visit (R. 119, 122). While in Texas, he went to the United States Marine Hospital in Galveston to "get some medicine" (R. 121) and was advised by Public Health Service doctors to enter the hospital, which he refused to do (R. 254); he was then advised to enter the nearby Rest Center at Kittiwake, Texas, which he also refused to do (R. 254). He was given medication and told to return to Sabinal, and to live and work on the ranch (R. 254). He returned to San Diego in January 1945 (R. 122).

Since October 1, 1944, petitioner has not worked and has lived continually with his parents, except

for the time he was in Texas, when he lived with relatives. Petitioner's necessary living expenses have been paid by his parents (R. 216-217).

In the district court, Judge Cavanaugh stated: "There is pleaded in this complaint both general and specific negligence and the libelant is asking that the doctrine of *res ipsa loquitur* be applied. The court rules that the evidence shows both and that he can rely on that doctrine also" (R. 295).^{*} The district court found as a fact that the petitioner was "struck upon the head by a large block, which was negligently and carelessly dropped by a fellow seaman * * *" (R. 43) and accordingly held that petitioner was entitled to recover damages for injury resulting from negligence (R. 296, 46). Specifically, petitioner was awarded \$8,557.60 as loss of past and prospective wages for approximately two years and four months, at the rate of \$3,600 per annum; and \$7,500 for pain and suffering (R. 44, 291-294). Petitioner was denied a recovery of maintenance and cure after October 1, 1944, on the ground that petitioner had incurred no expense in connection therewith (R. 45, 290, 297).

On appeal, the court below reversed the district court judgment in favor of petitioner on the

^{*} The district judge further stated (R. 295-296): "As I gather from this case, this libelant was on this boat, curling this rope around, and above him this block fell and hit him that was above him; that there was a man above there that was a fellow servant of the working man. That is negligence. * * *"

Jones Act cause of action (R. 317). Proof of the mere occurrence of the accident, the falling of the block, was held not to support a finding that Dudder was negligent or to warrant a judgment in favor of petitioner under the rule of *res ipsa loquitur*, applicable in this type of case (R. 317-320). The district court's denial of maintenance and cure to petitioner was affirmed (R. 328-329).

ARGUMENT

This case turns on its own facts and presents no novel question of general importance. Petitioner's right to recover damages for injury resulting from negligence exists solely by virtue of the Jones Act, *supra*, p. 2, which incorporates by reference the provisions of the Federal Employers' Liability Act, *supra*, p. 3, and petitioner's right to recover thereunder is no greater than that of railway employees. *Panama R. R. Co. v. Johnson*, 264 U. S. 375, 391-392. The court below recognized the source and scope of petitioner's right to recover for negligence and, in rejecting petitioner's contention that the doctrine of *res ipsa loquitur* here warranted judgment in his favor, followed the principles recently reiterated by this Court in *Jesionowski v. Boston & Maine R. Co.*, 329 U. S. 452.¹ Petitioner's claim for mainte-

¹ Cargo cases, such as *Commercial Corp. v. N. Y. Barge Corp.*, 314 U. S. 104, are applicable herein only to the extent that the rule of *res ipsa loquitur* which they state coincides with the rule stated under the Federal Employers Liability Act; to the extent that such cases contain a different rule, they are irrelevant here.

nance and cure was rejected in the courts below on a factual basis, and therefore presents no legal question requiring decision by this Court.

1. It is well settled that a recovery of damages for injury caused by negligence can be grounded on the doctrine of *res ipsa loquitur* where the proof shows that (1) the plaintiff was not negligent, (2) the defendant had exclusive control of all the factors which may have caused the accident, and (3) the accident was one which would not have occurred in the ordinary course of things if the defendant, having such control, used proper care.* *Jesionowski v. Boston & Maine R. Co.*, *supra*; see also *Sweeney v. Erving*, 228 U. S. 233, 240; *San Juan Light Co. v. Requeno*, 224 U. S. 89, 98-99. These elements all being present, the trier of fact is permitted to infer that the accident in question occurred as a result of the defendant's negligence. *Sweeney v. Erving*, 228 U. S. at 240. Here, however, the court below held that the necessary elements of a *res ipsa loquitur* case were not present, rejecting the claim that " * * * the circumstances were such as to justify a finding that [the accident] was a result of the defendant's negligence. * * *" *Jesionowski v. Boston & Maine R. Co.*, 329 U. S. at 457. We submit that

* There is no novelty in the application of the rule of *res ipsa loquitur* in Jones Act cases. *Johnson v. Griffith S. S. Co.*, 150 F. 2d 224 (C. C. A. 9); *Leathem Smith-Putnam Nav. Co. v. Osby*, 79 F. 2d 280 (C. C. A. 7); *Meton S. S. Co. v. Jensen*, 62 F. 2d 825 (C. C. A. 5); *Fauntleroy v. Argonaut S. S. Line, Inc.*, 27 F. 2d 50 (C. C. A. 4).

this holding was justifiable in the circumstances of this case."

The mere occurrence of an accident, without more, does not justify the imposition of liability for negligence; nor does it enable a plaintiff to invoke the doctrine of *res ipsa loquitur* as a means of avoiding the presentation of evidence of such character as to warrant a shift to the defendant of the burden of going forward on the issue of negligence. *Atchison, T. & S. F. Ry Co. v. Toops*, 281 U. S. 351; *Delaware &c. R. R. v. Koske*, 279 U. S. 7, 11. The record here shows no more than the fact of the accident. Peti-

"Petitioner's point as to the propriety of a trial *de novo* by a Circuit Court of Appeals in an admiralty case (Pet. 12-13, 31-34), has no relevance where, as here, the court below reversed the district court as a matter of law. *Mahnich v. Southern S. S. Co.*, 321 U. S. 96, 98-99. In any event, the opinion, findings of fact and conclusions of law of the district court were not rendered by the judge who heard the testimony but, after his death, by another district judge to whom the case was submitted on the transcript of record. In such circumstances, it is well settled that the plain and manifest error rule does not apply, that the findings of the district court are entitled to little weight and that the court below was clearly entitled to review the record independently. *The Ernest H. Meyer*, 84 F. 2d 496, 501 (C. C. A. 9), certiorari denied, 299 U. S. 600; *The Adriadne*, 13 Wall. 475, 479; *Matson Nav. Co. v. Pope & Talbot*, 140 F. 2d 295 (C. C. A. 9), certiorari denied, 326 U. S. 737; *Waterman S. S. Corp. v. United States S. R. & M. Co.*, 155 F. 2d 687 (C. C. A. 5), certiorari denied, 329 U. S. 761; *Stokes v. United States*, 144 F. 2d 82 (C. C. A. 2).

Petitioner's suggestion (Pet. 32) that the court below should have applied the two-court rule is manifestly without substance. There was only one district court decision.

tioner, was engaged in a rounding in operation over which he exercised an equal if not a greater amount of control than Dudder, his fellow seaman. There is no showing (and, indeed, not even any factual evidence from which an inference either way could be drawn) that the block which fell from Dudder's hands had not been pulled as the result of an unduly violent haul on the line by petitioner. Petitioner was working on the free end of a block and tackle, the purpose of which was to multiply force, and since there were four lines of rope, any pull exerted by petitioner would multiply 3 or 4 times the pull exerted on the block held by Dudder. Nor is this possibility eliminated by petitioner's testimony that the last thing he remembered was that he was bending over coiling rope, for as pointed out by the court below, lapses of memory antedate the actual injury by short periods of time in many concussion cases (R. 319).¹⁰

¹⁰ None of the materials relied on by petitioner (Pet. 21-22) negatives the possibility that the accident was caused by petitioner's own negligence. The pre-trial stipulation (R. 36) merely says that petitioner was hit by a falling block, and expressly states that the question of negligence is in issue (R. 39). The accident report of the purser (pharmacist's mate) was never offered in evidence and was received only for identification (R. 210); it probably would not have been admissible as evidence as to the accident, since it was a written report by a person who did not himself testify in regard to an event of which he had learned only at second-hand. Moreover, petitioner's theory that the accident occurred as the result of the casting off of a line which was fouled on a davit although allegedly based on the purser's report does

We submit that the court below was warranted in holding that the proof presented by the petitioner fell short of providing the necessary elements for invoking the doctrine of *res ipsa loquitur*. Nor can the missing elements be supplied by petitioner's contention, advanced for the first time in this Court, that he had not been furnished a safe place in which to do his work (Pet. 24-25).¹¹ This argument urges that, " * * * under the special circumstances shown * * *", Dudder's part of this rounding in operation was performed under " * * * extremely hazardous * * *" conditions (Pet. 24-25).¹² Obviously, however, this Court is not

not accord with the statement in that report that it was the guy block itself which was caught on the davit (R. 263). In any case, there is nothing in the stipulation nor the testimony to substantiate either version of the accident, although if either had in fact occurred, petitioner would have seen and probably remembered at least that much of the accident since the davit was in front of him and he could see it from where he stood.

¹¹ This "safe place to work" argument sounds in the nature of a claim for recovery based on alleged unseaworthiness, an entirely separate type of claim from that available to seamen under the Jones Act, *supra*, p. 2. Considered as such, it should be noted that petitioner neither alleged nor proved such a claim in the district court nor urged it in argument before the court below.

¹² The photographs, on which petitioner relies in support of this contention, were not offered in the district court as evidence. Petitioner expressly stipulated that " * * * there is nothing in these pictures that are to be used for any purpose other than to explain the operation of the particular work that they [petitioner and Dudder] were doing and where this libellant was standing at the time he was injured * * *" (R. 64).

the forum in which to initiate speculation as to working conditions on a meccano deck, an arrangement frequently used in the stowage of deck cargo. Petitioner indulges in such speculation in the absence from the record of the specific testimony contained in Dudder's deposition. As admitted by petitioner, the testimony of Dudder, the only witness to the accident, was " * * * equally available to both parties * * * " (Pet. 34). Petitioner chose not to use the deposition on the ground " * * * that he was not satisfied with certain parts of it * * * ", and that he had " * * * no burden * * * to bring in adverse witnesses * * * " (R. 316).¹³ Whatever the basis of petitioner's decision not to offer the deposition, it can hardly be said that it warrants a presumption of exclusive Government control, negligently exercised and solely responsible for the accident, over petitioner's working conditions. The court below could properly regard as decisive the fact that control of the rounding in operation was principally in the hands of petitioner, and that his proof in no way negated negligence on his part.

2. There is no occasion for a review of the rejection by both courts below of petitioner's claim

¹³ The Government took Dudder's deposition but did not offer it since the burden of proving negligence was on petitioner. *Sweeney v. Erving*, 228 U. S. at pp. 238-239.

for maintenance and cure on and after October 1, 1944. It is well settled, as petitioner concedes, that a claim for maintenance and cure cannot be successfully made where, as a matter of fact, a seaman has rejected proffered hospitalization. *The Bouker No. 2*, 241 Fed. 831, 835 (C. C. A. 2), certiorari denied, 245 U. S. 647; *The Santa Barbara*, 263 Fed. 369, 371 (C. C. A. 2); *Cummins v. Wry*, 10 F. 2d 408 (C. C. A. 3); *Marshall v. International Mercantile Marine Co.*, 39 F. 2d 551 (C. C. A. 2); *Meyer v. United States*, 112 F. 2d 482 (C. C. A. 2); *Van Camp Sea Food Co. v. Nordyke*, 140 F. 2d 902 (C. C. A. 9); *Bailey v. City of New York*, 153 F. 2d 427 (C. C. A. 2); *Stewart v. United States*, 25 F. 2d 869 (E. D. La.); cf. *Calmar S. S. Corp. v. Taylor*, 303 U. S. 525, 531. And there is ample justification in the record for the finding by the court below that petitioner had refused hospitalization. When petitioner left the Pacific Palisades Rest Center, after having stayed the maximum time permitted by its rules, he was directed to report to Public Health Service doctors in San Diego (R. 118, 122, 249-250). When he so reported, he was told to enter the Marine Hospital at San Francisco (R. 251, 119-121), but he refused to do so, preferring not to follow the advice of the Public Health Service doctors and apparently announcing his intention

to visit in Texas (R. 121, 122). It is obviously improper to infer from the lack of power on the part of Public Health Service officials to compel petitioner to enter a hospital that they had "acquiesced" in petitioner's plan to go to visit in Texas as an alternative course of treatment. Such "acquiescence" clearly did not indicate that the Public Health Service officials considered hospitalization unnecessary, but rather was merely a recognition of petitioner's refusal to be hospitalized.¹⁴ Petitioner's continuing rejection of hospitalization is shown by his refusal to enter the Marine Hospital at Galveston or the Rest Center at Kittiwake, Texas, in accordance with advice received from Public Health Service officials in

¹⁴ Both *Moyle v. National Petroleum Transport Corp.*, 150 F. 2d 840 (C. C. A. 2) and *Rey v. Colonial Navigation Co.*, 116 F. 2d 580 (C. C. A. 2) relied on by petitioner (Pet. 27) are distinguishable on their facts. In the *Moyle* case, the seaman had been discharged from the hospital and "no further hospitalization needed" noted on his hospital record. Further the court found that there was nothing in the record to indicate that additional hospital treatment at that time would have been of any benefit. In the *Rey* case, although there was some evidence that the seaman had requested his release from the hospital in order to spend the summer on a farm, and a doctor testified that additional hospitalization would have been desirable, the hospital record showed "maximum improvement from hospitalization" as the reason for discharge; and the hospital doctor advised the seaman to return in the fall for a checkup. Since the court found the seaman suffered from tuberculosis, which is primarily a matter of rest, it held that the question of whether the seaman had forfeited his rights was one for the jury, and reversed the district court's dismissal of the complaint for failure of proof.

Galveston to whom he went for medication (R. 253-254). The court below was clearly justified in finding, from these facts, that petitioner had rejected hospitalization which, in and of itself, defeats his claim for maintenance and cure.

Moreover, petitioner's claim for maintenance and cure was rejected by both courts below on the ground that he had incurred no expense in connection therewith. There is ample authority to support this disposition of his claim. *Field v. Waterman S. S. Corp.*, 104 F. 2d 849 (C. C. A. 5); *Carroll v. Moran T. & T. Co.*, 88 F. 2d 144 (C. C. A. 9); *Cummins v. Wry*, 10 F. 2d 408 (C. C. A. 3); *Robinson v. Swayne & Hoyt*, 33 F. Supp. 93 (S. D. Cal.); cf. *Calmar S. S. Corp. v. Taylor*, 303 U. S. 525, 531; *Bailey v. City of New York*, 153 F. 2d 427 (C. C. A. 2) and cases there cited.

CONCLUSION

The decision below raises no issue of general importance, and there is no conflict of decision. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

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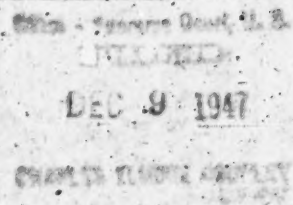
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SEPTEMBER 1947.

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No. 138

In the Supreme Court of the United States

OCTOBER TERM, 1947

ROBERT C. JOHNSON, PETITIONER

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	3
Summary of Argument	18
Argument:	

I. Petitioner has failed to establish a prima facie case in support of his allegation that he was injured by the negligence of a fellow servant	22
II. The court below was not bound by the "two court" rule or by the "plain and manifest error" rule	35
III. Petitioner's rejection of marine hospital treatment bars him from recovering maintenance and cure	37
Conclusion	42

CITATIONS

Cases:

<i>Alioto v. Imahashi</i> , 115 F. 2d 324	37
<i>Ariadne, The</i> , 13 Wall. 475	36
<i>Bailey v. City of New York</i> , 153 F. 2d 427	38, 42
<i>Bouker No. 2, The</i> , 241 Fed. 831, certiorari denied, 245 U. S. 647	38
<i>Calmar S. S. Corp. v. Taylor</i> , 303 U. S. 525	38, 42
<i>Carroll v. Moran T. & T. Co.</i> , 88 F. 2d 144	42
<i>Commercial Corp. v. N. Y. Barge Corp.</i> , 314 U. S. 104	23, 25
<i>Cortes v. Baltimore Insular Line</i> , 287 U. S. 367	34
<i>Cummins v. Wry</i> , 10 F. 2d 408	38, 42
<i>DeZon v. Amer. President Lines</i> , 318 U. S. 660	24
<i>Ernest H. Meyer, The</i> , 84 F. 2d 496, certiorari denied 299 U. S. 600	36
<i>Field v. Waterman S. S. Corp.</i> , 104 F. 2d 849	42
<i>Jesionowski v. Boston & Maine R. Co.</i> , 329 U. S. 452	17, 32
<i>Marguerite, The</i> , 140 F. 2d 491	36
<i>Marshall v. International Mercantile Marine Co.</i> , 39 F. 2d 551	38
<i>Matton Oil Transfer Corporation v. The Dynamic</i> , 123 F. 2d 999	36
<i>Matson Nav. Co. v. Pope & Talbot</i> , 149 F. 2d 295, certiorari denied, 326 U. S. 737	36
<i>Moyle v. National Petroleum Transport Corp.</i> , 150 F. 2d 840	41
<i>New Orleans Coal & Bisso Towboat Co. v. United States</i> , 86 F. 2d 53	37

Cases—Continued

	Page
<i>Reid v. Am. Exp. Co.</i> , 241 U. S. 544.....	36
<i>Rey v. Colonial Navigation Co.</i> , 116 F. 2d 580.....	41
<i>Robinson v. Swayne & Hoyt</i> , 33 F. Supp. 93.....	42
<i>Saguache, The</i> , 112 F. 2d 482.....	38
<i>San Juan Light Co. v. Requena</i> , 224 U. S. 891.....	33, 34
<i>Santa Barbara, The</i> , 263 Fed. 369.....	38, 41
<i>Seas Shipping Co. v. Sieracki</i> , 328 U. S. 85.....	24
<i>Smith v. United States</i> , 96 F. 2d 869.....	17
<i>Stewart v. United States</i> , 25 F. 2d 869.....	38
<i>Sweeney v. Erving</i> , 228 U. S. 233.....	17, 26, 34
<i>Towada v. United States</i> , 162 F. 2d 615.....	41
<i>United States v. Loyola</i> , 161 F. 2d 126.....	38, 41
<i>Van Camp Sea Food Co. v. Nordyke</i> , 140 F. 2d 902.....	38

Statutes:

Federal Employers' Liability Act, Act of April 22, 1908, Sec. 1, 35 Stat. 65, as amended by the Act of August 11, 1939, 53 Stat. 1404, 45 U. S. C. 51.....	2, 3, 25
Jones Act, Act of March 4, 1915, Sec. 20, 38 Stat. 1185, as amended by Sec. 33 of the Merchant Marine Act of June 5, 1920, 41 Stat. 1007, 46 U. S. C. 688.....	2, 25

Miscellaneous:

46 C. F. R. 136.1-136.14.....	14
46 C. F. R. Cum. Supp. 136.101-136.110.....	14
46 C. F. R. Cum. Supp. 136.103.....	14
Dorland, <i>The American Illustrated Medical Dictionary</i> , 18th Ed. (1938) p. 1389.....	12
Webster New International Dictionary (2d Ed. 1936).....	39

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OPINIONS BELOW

The findings of fact and conclusions of law (R. 41-46) of the District Court of the Southern District of California, Central Division, are not reported. The oral remarks of the District Court appear in the record at pp. 289-302. The opinion of the Circuit Court of Appeals for the Ninth Circuit (R. 315-329) is reported at 160 F. 2d 789.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 24, 1947 (R. 330). The petition for writ of certiorari was filed on June 18, 1947, and was granted on October 13, 1947 (R. 332). The jurisdiction of this Court is

invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the court below erred in holding that petitioner had failed to establish a prima facie case in support of his allegation that his injury was caused by the negligence of a fellow seaman.

2. Whether both the trial court and the court below erred in holding that petitioner was not entitled to recover the maintenance and cure here involved.

STATUTES INVOLVED

The Jones Act, Act of March 4, 1915, Sec. 20, 38 Stat. 1185, as amended by Sec. 33 of the Merchant Marine Act of June 5, 1920, 41 Stat. 1007, 46 U. S. C. 698, provides in pertinent part:

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply * * *

The Federal Employers' Liability Act, Act of April 22, 1908, Sec. 1, 35 Stat. 65, as amended by the Act of August 11, 1939, 53 Stat. 1404, 45 U. S. C. 51, provides in pertinent part:

Every common carrier by railroad while engaging in commerce between any of the several States or Territories * * * shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce * * * for such injury * * * resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, road-bed, works, boats, wharves, or other equipment. * * *

STATEMENT

This suit was instituted by a libel filed by petitioner on November 13, 1945, in the United States District Court for the Southern District of California, Central Division (R. 1-8). Petitioner alleged that, while employed as a seaman on the S. S. *Mission Soledad*, he was struck on the head and injured by a block which was " * * * negligently and carelessly dropped by a fellow seaman * * * " (R. 5). He sought damages under the Jones Act, *supra*, as well as compensation for loss of wages, and maintenance and cure (R. 9). The Government answered (R. 9-15), alleging, *inter alia*, that it was ignorant of the cause of the injury and demanded proof thereof (R. 12). A pretrial stipulation was entered into (R. 35-40), and the case was tried

before Judge Hollzer (R. 58). Judge Hollzer, however, died after submission of the case on oral argument and briefs but before decision (R. 49), and by stipulation of the parties, the case was submitted on a transcript of the record to Judge Cavanah (R. 49). The material portions of the record may be briefly summarized as follows:

1. *The pre-trial stipulation.* The pre-trial stipulation states that petitioner, on March 25, 1944, at Los Angeles, signed on the S. S. *Mission Soledad*, a steam tanker owned and operated by the United States, as an able-bodied seaman for a voyage not to exceed twelve months (R. 35-36); and that, on June 30, 1944, while the vessel was at Pearl Harbor, T. H., petitioner, performing duties aboard the ship sustained an injury "* * * when a block, which was being removed by a man working above libelant, fell, striking libelant on the back of the head." (R. 36). The stipulation next recites that petitioner "* * * alleges that this accident was due to the negligence of the ship and respondent denies that such injuries were caused by any negligence of the respondent. * * *" (R. 36). The remainder of the body of the stipulation is concerned with details and exhibits with regard to the nature and extent of petitioner's injuries, as well as the basis for the calculation of wages and bonus (R. 36-39). The statement of "Issues" for

trial contained in the stipulation includes the issue whether " * * * the accident was due to negligence of the respondent. * * * " (R. 39).

2. *Testimony.* Petitioner's testimony, the only testimony offered in support of his allegation that his injury was caused by the negligence of a fellow seaman, showed the following: On June 30, 1944, the *Mission Soledad* was at Pearl Harbor making ready to go to sea (R. 61). The port side forward boom had been swung in and forward and was nested in a cradle located on the port side of the forward gun tube (R. 62, 90). When in use over the side of the ship, this cargo boom was steadied and manipulated by fore and aft guy lines (R. 62). The guy line involved in this case, the aft guy line, consisted of a 30-foot wire pennant and a 4-part tackle made up of two blocks with two "double sheave" lines or falls, between them (R. 62). One end of the pennant was attached to the outer end of the boom, and the other end was attached to the upper, or forward, block (R. 62). While the cargo boom was in use, the lower block of the tackle was shackled to a pad eye located on the well deck of the tanker just aft of the port foremast shroud (R. 62, 101). When the ship is being secured for sea, as here, the guy line is "unbent" or detached from the cradled boom; and to accomplish this, it is first necessary to round in the tackle until the two blocks are "two-blocked". It was this "two-

blocking" operation which was being performed by petitioner, together with a fellow seaman named Dudder, at the time of the injury here involved. The lower block had been unshackled from the well deck pad eye and passed up to the meccano deck, a superficial structure consisting of a series of stanchions and beams built above the main or well deck in order to carry deck cargo (R. 100-102). Here the lower block was carried aft to the full span of the falls and the lines straightened out so that they would run free (R. 102). In petitioner's words "It [the lower block] was lifted up there and brought around, and straightened out in line with the tip of the boom, so in taking in all the slack there would be no lines to foul up the guy line we were taking in. It would run free." (R. 101.) Dudder was on the meccano deck holding the lower block and keeping the falls taut to prevent fouling (R. 101-102, 108). Petitioner was on the well deck hauling in and coiling the hauling end of the tackle (R. 102, 105). The line which petitioner was rounding in ran from him through the upper block, then through the lower block, through the upper block again, and back to the lower block where it was made fast (R. 106). As petitioner rounded in the line thus reducing the span of the falls, Dudder moved forward carrying the unshackled lower block, his rate of movement being controlled by the rate at which petitioner

hauled in and coiled down the line (R. 102, 107).¹ Petitioner testified that he was on the well deck forward of the third 'thwartship beam' (R. 110), and that the last time he noticed Dudder the latter was walking on a longitudinal beam on the meccano deck, approximately six feet aft of the third 'thwartship beam (R. 103). Petitioner's last recollection of the rounding in operation was his bending over and coiling down line (R. 110). The lower block carried by Dudder fell and,

¹ On an important issue of fact in this case, petitioner makes a serious misstatement. The petitioner states (Pet. 3) that he was assisting Dudder, referring to pages 264, 210, and 102 of the record. None of these record references give any support to the statement thus made. On the contrary, pages 102 and 107 of the record indicate quite clearly that petitioner was in control of the rounding-in operation. Petitioner similarly creates an impression opposite to that supported by the record when he states that he was "taking in the slack" (Pet. 3). As we show above, petitioner was hauling and coiling, Dudder's rate of movement forward being controlled by petitioner's hauling on the free end of the line (R. 102-107).

² It is not clear from the record where petitioner was standing at the time of the accident. He stated that he was standing "just aft" of the third 'thwartship beam between the niggerhead of the winch and the port outboard stanchion (R. 105). The niggerhead of the winch, however, is forward of the third 'thwartship beam (Petitioner's Exhibits 1, 8). Moreover, when asked to indicate his position on photographs of an allegedly similar deck lay-out (R. 63-65) he marked a spot which was forward of the third 'thwartship beam (R. 105, Petitioner's Exhibits 1, 8). He subsequently stated that he was standing forward of the niggerhead, four feet forward of the third 'thwartship beam (R. 110). The 'thwartship beams are approximately 12 feet apart (R. 103).

swinging like a pendulum on the lines between it and the upper block with the third 'thwartship beam acting as a fulcrum, struck petitioner on the back of the head³ (R. 299; Pet. 4).

Petitioner's testimony, in support of his allegation of negligence on the part of a fellow seaman, consisted of a few questions and answers which, for the convenience of the Court, are here set out verbatim:

[R. 107] Q. But as you pulled in the rope, it would pull the after block forward?—A. Yes.

Q. And did Mr. Dudder carry that block in his hand?—A. Yes, he did.

Q. And as you pulled in the rope, he would walk forward with the block?—A. Yes.

Q. Now, were you able to take in that rope freely at all times before the accident?—A. Yes.

Q. And did Mr. Dudder pull on the block so it would jerk your rope or pull the rope that you were coiling?—A. No.

Q. And from the position you have indicated here at "Q-1," were the ropes laying

³ At the trial petitioner indicated that, during the rounding-in operation, the upper or forward block lay approximately on the first 'thwartship beam (R. 109, Petitioner's Exhibit 8); and approximately 30 feet aft of the end of the cradled boom (R. 109). He stated that the last time he saw Dudder, the latter was on a longitudinal beam approximately 6 feet aft of the third 'thwartship beam (R. 103-104, Petitioner's Exhibit 8). As we have indicated, petitioner, at the time of the injury, was standing forward of the third 'thwartship beam.

across the Maccano deck at all times prior to the accident?—A. Yes.

* * * * *

[R. 108] Q. Now, if these ropes between the two blocks are not kept in a taut position, would you be able to pull in the rope and pull the blocks together?—A. No.

Q. Why?—A. Unless they were in a comparatively taut position, they would foul on one another and it would be impossible for me to take in the slack.

* * * * *

[R. 108-109] Q. By Mr. FALL. Were these lines between the two blocks ever lifted up in the air any distance at all after you started taking the blocks or bringing them together?—A. No.

Q. Now, before the accident happened, were the ropes lying over this second athwartship beam and the third athwartship beam?—A. Yes.

Q. I am referring, of course, and you are, to the ropes between the blocks?—A. Yes.

* * * * *

[R. 109] Q. Did Mr. Dudder yell to you at any time before you were struck?—A. No.

* * * * *

[R. 110] Q. Now, when you were standing there just before the accident, in the last thing you knew before the accident happened, what were you doing?—A. I was coiling the line on the well deck or the Maccano deck.

Q. Standing up or leaning over?—A. I was bending over.

Q. Then what happened?—A. That is all I remember.

[R. 115] Q. Well, was there any defective equipment that caused this accident?—
A. No.

Petitioner was the only witness who testified with regard to the accident. The Government located Dudder and arranged for his deposition to be taken and made the transcript available to the petitioner (R. 316). Petitioner's counsel did not offer this deposition, stating, as noted by the court below, that he was not satisfied with " * * * certain parts of it * * *" and claiming there was no burden on petitioner " * * * to bring in adverse witnesses" (R. 316).⁴

⁴The petition (Pet. 4) states that petitioner's trial counsel " * * * assumed, without objection, that the deposition of Dudder having been taken as a witness for the * * *" Government would be offered by the Government, referring to pages 64 and 124 of the record. We do not see how such an "assumption" could be decisive on a principal issue in any circumstances. Here, the record references show no such assumption. Page 64 shows a statement, at best self-serving, that " * * * your [the Government's] deposition will show the man that dropped the block was walking forward on one of these longitudinal beams * * *." Page 124 shows simply a colloquy in which trial counsel for the Government makes the concession, repeatedly made, that petitioner was struck by a block. This colloquy follows an attempt by petitioner's trial counsel to utilize petitioner for the purpose of testifying to conversations with Dudder (R. 124), the precise question again running only to the fact that petitioner was hit by a block.

The balance of the testimony adduced by petitioner at the trial consisted of medical evidence and exhibits. Petitioner was taken by ambulance to the emergency hospital, at Pearl Harbor and, after receiving first aid, was sent back to the ship where he remained overnight (R. 36, 111). On the following day, he was examined by a United States Public Health Service surgeon, and was hospitalized for the next four days at Queen's Hospital, Honolulu (R. 36, 112, 241-242). He was discharged from the hospital on July 5, 1944; the Public Health Service record indicated that there had been marked improvement in petitioner's condition, that he was fit for travel, but that he was not fit for duty (R. 112, 242). Petitioner left Pearl Harbor on July 22, 1944, aboard another vessel; he arrived in San Francisco on July 30, 1944, and proceeded to his parents' home in San Diego (R. 114, 116).⁵

On August 17, 1944, petitioner was examined by United States Public Health Service doctors at Los Angeles and was hospitalized at the Marine Hospital (R. 117, 247). He was discharged from the hospital on August 23, 1944, his certificate of discharge stating that no further hospitalization was necessary (R. 245), and was sent to the

⁵ On July 31, 1944, petitioner went to the office of the attorneys for the underwriters of the vessel, where he was paid \$247.10, and he signed a release in full (R. 115-116, 33-34). The courts below set aside the release (R. 45-46, 289, 321-326), and there is no question raised in regard thereto.

Pacific Palisades Seamen's Rest Center, Santa Monica, California (R. 117-118). He remained at the Rest Center until October 1, 1944,⁶ when, in accordance with its rules limiting stays to a maximum of six weeks, he was discharged with a diagnosis of post concussion syndrome' (R. 118, 250). The medical report of the Rest Center indicates that petitioner complained of headaches and other nervous symptoms including a fear that he might become a psychiatric patient (R. 249-250);⁷ it stated that he was unfit for sea duty for three months; recommended continued treatment at the U. S. Public Health Service in San Diego, and made a prognosis of his condition as "good" (R. 250). Petitioner testified that he still had the "same old ailments" (R. 118) and, upon returning home, he went to bed for several days (R. 119).

On October 4 and 5, 1944, petitioner was furnished out-patient care by the United States Public Health Service in San Diego (R. 119, 251-252). The doctors there advised further hospitalization and offered to send him to the Marine

⁶ There is no question here presented as to wages to the end of the voyage, or maintenance and cure until October 1, 1944, when petitioner was discharged from the rest center.

⁷ Syndrome is defined as "the sum of signs of any morbid state." Dorland, *The American Illustrated Medical Dictionary*, 18th Ed. (1938), p. 1389.

⁸ The report indicates that this fear was apparently aggravated by visits of petitioner's father, who "in his anxiety was apt to be very critical and expressed the wish to collect greater damages" (R. 250).

Hospital in San Francisco (R. 251, 119-120). Petitioner declined, stating that he "would rather not go" (R. 120). When asked why he refused further hospitalization he stated, "to my reasoning, after being in two hospitals and a rest center, if they couldn't find out what was the matter, why, I couldn't see going back to another hospital. It was just one doctor's opinion against a half dozen or more that I had seen already." (R. 121.) He apparently told the Public Health Service officials in San Diego that he intended taking a trip to Sabinal, Texas, to visit the ranch of relatives, and was told by these officials to visit the United States Public Health Service office in Galveston (R. 119, 122). While in Texas, petitioner stated that he went to the Marine Hospital in Galveston "to get some medicine" (R. 121). On November 30, 1944, officials there advised him to enter the hospital for observation, but he refused to do so (R. 254). He was then advised to enter the nearby Rest Center at Kittiwake, Texas, which he also refused to do (R. 254). He was then given medication and told to return to his former home at Sabinal, Texas, and to live and work on the ranch (R. 254).*

* Petitioner's counsel contends that Public Health Service officials acquiesced in petitioner's own diagnosis, namely, that he wanted to get away from " * * * all noise and just rest and enjoy people * * *" (R. 121; Pet. 27). As indicated above, Public Health Service officials continually advised hospitalization, a diagnosis which seems amply supported by the testimony of petitioner's father and brother in

He returned to San Diego in January, 1945 (R. 122).

Petitioner has not worked since October 1, 1944. From that date, he has lived continuously with his parents or with relatives, and his necessary living expenses have been paid by his parents (R. 216-217).

3. *Purser's report.* A purser's accident report was offered by petitioner for identification (R. 210) and is contained in the record (R. 262-264).¹⁰ Paragraph 11 of this report, read into

the district court (R. 157-163, 164-167). The testimony of petitioner's brother is to the effect that, at the time of petitioner's stay in Texas, he was almost continually in a dangerous condition and required constant guarding; that, when left alone on one occasion for 15 minutes, he wandered off and was only found by a general search by everyone on the ranch; and that, when found, petitioner was "standing on the edge of a bluff overlooking the river" (R. 158-159). The testimony of petitioner's father is to the same effect, with the difference that spells were less frequent but that petitioner at all times exhibited psychiatric symptoms (R. 164-167).

¹⁰ Pursuant to statute and executive order, such an accident report was required by Federal regulations to be made (46 C. F. R. Cum. Supp. 136.103) as the initial step under Marine Investigation Board Rules. 46 C. F. R. Cum. Supp. 136.101-136.110. Prior to August 26, 1942, reports were made to the Marine Investigation Board of the Department of Commerce and were only required in cases of a marine casualty or accident involving loss of life. 46 C. F. R. 136.1-136.14. The wartime rules here applicable covered, as well, marine casualty or accident not involving loss of life. A report of personal accident not involving death, as here, was made on Coast Guard Form NCG 924 (e) in quadruplicate. These Marine Investigation Board Rules contain provisions for preliminary investigations, "A" Board hearings, sanc-

the record by petitioner's counsel on cross-examination, states (R. 211):

Sailors were stowing the forward port side boom and the guy block was caught on a davit, one of the men cast it off and line and block fell striking this sailor on the back of the head, block causing a large cut on this man's scalp. * * *

4. *District Court decision.* In his oral remarks, Judge Cavanah stated: "There is pleaded in this complaint both general and specific negligence" and the libellant is asking that the doctrine of *res ipsa loquitur* be applied. The court rules that the evidence shows both and that he can rely on that doctrine also" (R. 295).¹²

tions, provisions for appeals, etc. An examination of the regulations shows clearly that the initial report is merely required to bring a marine casualty or accident to the attention of the appropriate Coast Guard district. Suspension or revocation proceedings, the ultimate sanction in an "A" Board proceeding, must be preceded by a full hearing instituted by formal charges and specifications, notice to the person accused, the power to summon witnesses, to examine and cross examine them, the right to be represented by counsel, and the right to appeal to the chief District Coast Guard Officer of the district in which the hearing was held.

¹¹ Judge Cavanah is incorrect in his statement that both general and specific negligence were pleaded. The complaint alleges only specific negligence on the part of a fellow seaman (R. 5).

¹² The district judge further stated (R. 295-296): "As I gather from this case, the libellant was on this boat, curling this rope around, and above him this block fell and hit him that was above him; that there was a man above there that was a fellow servant of the working man. This is negligence.

The district court found as a fact that the petitioner was "struck upon the head by a large block, which was negligently and carelessly dropped by a fellow seaman * * *" (R. 43) and accordingly held that petitioner was entitled to recover damages for injury resulting from negligence (R. 296, 46). Specifically, petitioner was awarded \$8,557.60 as loss of past and prospective wages for approximately two years and four months, at the rate of \$3,600 per annum; and \$7,500 for pain and suffering (R. 44, 291-294). Petitioner was denied a recovery of maintenance and cure after October 1, 1944, on the ground that petitioner had incurred no expense in connection therewith (R. 45, 290, 297).

5. *Circuit Court of Appeals decision.* After summarizing the case, the court below noted, in view of the fact that the case had been decided in the district court on the written record because of Judge Hollzer's death and the further fact that the appeal was in admiralty, that the "clearly erroneous" rule of review was not applicable (R. 317). On petitioner's Jones Act

"In his cross-appeal attacking the district judge's allowance of maintenance and cure after October 1, 1944, petitioner stated that the hearing in the circuit court of appeals was a trial *de novo*, a proposition needing no citation of authority in the Ninth Circuit. Opening Brief of Appellant Johnson, C. C. A. 9, No. 11378, p. 7. Petitioner also described the proceeding in the court below as a "trial *de novo*" in connection with his motion for an order to take proof on maintenance after the date of the district court judgment (R. 310-311). Failure to grant this motion is here assigned

claim, the court below held that there was no evidence to support the district judge's finding of negligence, and that the doctrine of *res ipsa loquitur* was not available in the circumstances of the case as a substitute for proof of negligence (R. 317). The circuit court of appeals recognized that petitioner rested his Jones Act case on the negligence of a fellow-servant (R. 317). Reviewing all the evidence (R. 317-318, 319), the court held that there was nothing to show negligence on the part of Dudder nor proof of any circumstances to justify a finding of negligence against the Government (R. 317, 319-320).¹⁴ The court

as error (Pet. 19). As to the Government's appeal to the court below, petitioner here contends that the "clearly erroneous" rule applied (Pet. 10, 12-13, 33-34). In his reply brief to the Government's appeal on the issue of negligence to the court below, petitioner stated that an " * * * Admiralty appeal is a trial *de novo*, and the case being tried on a transcript, the ordinary presumptions in favor of the findings of the lower Court do not exist." Reply Brief of Johnson, C. C. A. 9, No. 11378, p. 1. In this reply brief (pp. 2-6), petitioner proceeded to argue the negligence question from the record. It is interesting to note that petitioner's reply brief in the court below employs, as the test of *res ipsa loquitur*, the rule of the *Smith* case (p. 5), the quotation of which by the court below is here urged as serious error. (See fn. 14, *infra*, p. 18.)

¹⁴ In considering petitioner's *res ipsa loquitur* argument, the court below specifically cited and relied on the decisions of this Court in *Jesionowski v. Boston & Maine R. Co.*, 329 U. S. 452, and *Sweeney v. Erving*, 228 U. S. 233. In the introductory portion of its discussion of the *res ipsa loquitur* contention, the court below cited various general definitions of the rule, one of which was taken from *Smith v. United*

found that the evidence showed that Dudder was assisting petitioner in the "two-blocking" operation and that, beyond this, the record only showed the occurrence of the accident itself (R. 317, 318). Accordingly, the district court judgment against the Government on the Jones Act claim was reversed (R. 320). On petitioner's cross-appeal, the court below affirmed the district court's denial of maintenance and cure after October 1, 1944 (R. 328-329).

SUMMARY OF ARGUMENT

I.

Petitioner's suit for damages under the Jones Act rests exclusively on the charge that he was injured as the result of negligence on the part of a fellow seaman, Dudder. The court below measured the proof adduced by petitioner in support of his charge and held that no negligence had been shown. Petitioner's primary attack on this decision is a contention, supported by a reference to the rule of proof which the law imposes on bailees in possession upon proof of damage to goods, that a presumption of Dudder's negligence was raised by proof of the fact of the accident and that the Government was under a duty to States, 96 F. 2d 976 (C. C. A. 5). The petitioner uses (Pet. 20) this general reference as the basis for his contention that the court below improperly followed the *Smith* case. As indicated above, a reading of the opinion illustrates that the *Sweeney* and *Jesionowski* cases were followed and applied (R. 318-320).

prove its freedom from negligence. From this, petitioner contends that proof of the accident coupled with an unfavorable inference drawn from the Government's silence required judgment in his favor.

It is well established that recovery under the Jones Act must be based on proven fault. Petitioner is essentially seeking to overturn this rule which is embodied in a host of decisions under the Jones Act and the related provisions of the Federal Employers' Liability Act. We submit that there is no warrant for departure from the established rule herein. Petitioner's case is one charging simple negligence on the part of a fellow-servant and meets none of the underlying policy requirements which ground the establishment of special rules of proof in the law of bailments or in the type of case covered by the *res ipsa loquitur* doctrine.

Tested by the established rule that petitioner carries the burden of proof, an analysis of his testimony, the only testimony offered with regard to the accident here involved, fails to establish negligence on the part of Dudder. This testimony, examined in detail, demonstrates that petitioner and Dudder were engaged together in performing a familiar and simple operation. The operation was under petitioner's control and his testimony establishes no more than this and the fact of the accident. On this testimony, therefore, the court below was fully justified in holding

that no judgment against the Government on account of negligence was justified. In fact, a strong inference is raised by petitioner's testimony that the accident was caused by his own conduct. Petitioner argues from other portions of the record, not so much to prove negligence on the part of Dudder as to rebut the inference which thus arises against him. Petitioner contends that, if the probability that he caused the accident by his own conduct be put at rest by his arguments, the rule of *res ipsa loquitur* should be applied to reach the same result as that for which he argues by analogy to the law of bailments.

We submit that this case contains none of the elements which justify the use of the *res ipsa loquitur* doctrine. Accordingly, we submit that the court below correctly held no negligence on the part of the Government had been proved.

II

Petitioner contends (a) that the court below was bound by the concurrent decisions of two district court judges on the issue of negligence, and (b) that the court below erred in failing to use the "plain and manifest error" rule.

As shown in our statement of facts, Judge Hollzer, before whom this case was tried, died before deciding it. The case was decided by Judge Cavanah on a written transcript of the record. The "two court" rule which petitioner

invokes is said to be met by Judge Cavanah's conclusion that the accident resulted from Rudder's negligence, together with Judge Hollzer's signature to the pre-trial stipulation and his rulings on certain points of evidence in the course of the trial before him. We do not think that this is a situation which justifies any "two court" rule argument.

As to petitioner's contention with regard to the "plain and manifest error" rule, it is well settled that an appellate court in an admiralty case is free to review the whole record and is not bound by the findings of a trial judge who neither saw nor heard the witnesses.

III

It is well settled that a claim for maintenance and cure cannot be successfully made where, as a matter of fact, a seaman has rejected proffered hospitalization. Petitioner not only persisted in his unwillingness to enter the Marine Hospital at San Francisco, but he also refused hospitalization in the Marine Hospital at Galveston. Petitioner contends that this was no such refusal of hospitalization as would discharge respondent from liability, because the Public Health Service doctors "acquiesced" in his plans to go to the Texas ranch for a rest and to receive out-patient treatment from the Public Health Service in Galveston. There is nothing in the record, however, to justify the assumption that the Public

Health Service doctors, who could not compel him to take their advice, accepted petitioner's plan as a satisfactory alternative to the hospital treatment which they advised. Thus the record fully sustains the finding of the court below that petitioner voluntarily rejected hospitalization. Although this finding alone is sufficient to defeat petitioner's claim for maintenance and cure, the same conclusion results from a further finding by both courts below that petitioner had incurred no expense or liability in connection therewith.

ARGUMENT

I

PETITIONER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE, IN SUPPORT OF HIS ALLEGATION THAT HE WAS INJURED BY THE NEGLIGENCE OF A FELLOW SERVANT

Petitioner's suit for damages under the Jones Act rests exclusively on the allegation that he was injured as the result of negligence on the part of a fellow seaman (R. 5).¹⁵ The court below measured the proof adduced by petitioner in support of the charge, and held (1) that no specific negligence had been shown and (2) that the circumstances shown would not justify a finding of negligence (R. 317, 319-320). In so holding, the court below necessarily sustained the

¹⁵ At the trial, petitioner expressly stated, in answer to a question by his attorney, that his injury had not been caused by defective equipment (R. 115).

Government's right, as respondent in the trial court, to defend on the ground that petitioner had not proved his case and to introduce no evidence on the issue of negligence (R. 316).¹⁶

Petitioner's primary attack on this decision of the court below raises a broad and, we believe, completely novel contention. Referring to the rules of proof and inference stated by this Court in *Commercial Corp. v. N. Y. Barge Corp.*, 314 U. S. 104, 111 (Pet. 10, 23), petitioner states that the court below erred in weighing the proof adduced by him in support of his charge of negligence by Dudder (the fellow seaman here involved), and finding it insufficient to warrant judgment, on the ground that the decision cleared the Government of the " * * * duty of explaining Dudder's conduct, of rebutting the presumption of negligence on the part of Dudder" (Pet. 23). In other words, petitioner contends that the liability of a defendant, in a suit under the Jones Act for damages based on negligence of a fellow seaman, is to be determined by the rules of proof applied under the law of bailments. Adopting

¹⁶ Petitioner makes references to a statement in the pre-trial stipulation that he was injured " * * * when a block, which was being removed by a man working above libellant, fell, striking libellant on the back of the head" (R. 36) which appear to suggest that the Government stipulated its negligence in advance of trial (Pet. 21). The next sentence in the stipulation contains a specific denial of negligence by the Government (R. 36), and the statement of "Issues" for trial contained in the stipulation includes the issue whether " * * * the accident was due to negligence of the respondent. * * *" (R. 39).

this theory, proof of the fact of the accident would throw on the defendant in such a suit the duty to come forward and disprove negligence, a duty which the law casts upon bailees in possession.

We think that there is no warrant for the rule thus sought by petitioner. We recognize the solicitude with which this Court protects the rights of merchant seamen. *Seas Shipping Co. v. Sieracki*, 328 U. S. 85, 91. However, the right here involved is that which Congress has afforded by the Jones Act, *supra*, p. 2, under which an injured seaman may, at his election, maintain an action for damages in which "all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply * * *." The statute thus makes applicable to seamen the provisions of the Federal Employers' Liability Act, *supra*, pp. 2-3, which give to railroad employees a right of recovery for injuries resulting from the negligence of their employer, its agents or employees. *DeZon v. Amer. President Lines*, 318 U. S. 660, 665. The statute is not a compensation act and does not impose liability without fault; recovery of damages under its provisions must be based on proven fault. *DeZon v. Amer. President Lines*, 318 U. S. at 671-2. In meeting the statutory test of "proven fault," a claimant under the Jones Act may be, of course, assisted by inferences justified by the circumstances shown

in his proof. But the rule here sought by petitioner goes far beyond the use of justified inferences from his evidence as an aid to meeting the burden of proof, and would overrule the principle stated in the *DeZon* case and a host of related cases under the Jones Act and the Federal Employers' Liability Act. We do not believe that the instant case presents any proper occasion for departure from the well established rule. Petitioner's case is one charging simple negligence by a fellow servant in which he cannot say that he was without access to the facts of the accident. He thus fails to bring himself within the policy which underlies the rule of bailments upon which he relies.¹⁷ *Commercial Corp. v. N. Y. Barge*

¹⁷ As noted by the court below, the Government located Dudder, whose negligence was put at issue by petitioner's claim, and arranged for the taking of his deposition (R. 316). The broad questions as to rules of proof which are raised in this case in reality stem from a unique feature of the proceeding of the district court, petitioner's decision not to use this deposition on the ground that he was not satisfied with certain parts of it and because "there is no burden on the libelant to bring in adverse witnesses" (R. 316). Petitioner's decision in reality assumed the new rule of proof for which he here contends. Presumably, Dudder's testimony would have constituted the best evidence. In this connection, it should be noted that petitioner's statement (Pet. 4, referring to R. 64, 124) that the deposition of Dudder had been taken as a witness for the Government and that petitioner's trial counsel "assumed" that the Government would offer it, is unsupported by the record. See fn. 4, *supra*, p. 10. The deposition was taken with both parties represented by counsel and subject to the usual admiralty stipulation that it was equally available to both parties and could be offered by either party.

Corp., 314 U. S. at 111. We submit that the well established rule, that a claimant under the Jones Act has the burden of proving fault, is here applicable; that the Government was entitled to rest in the trial court on the ground that no showing of negligence had been made out without the penalty of an unfavorable inference being drawn from its action (*Sweeney v. Erving*, 228 U. S. 233, 238-239); and that the court below was correct in testing petitioner's case by the usual rule.

So tested, the record fails to establish negligence. As we have already stated, petitioner specifically charged negligence on the part of a fellow servant (R. 5). The only testimony offered on the issue of negligence, that of petitioner himself, established the specific situation in which the accident occurred. He and Dudder were engaged in rounding in blocks which formed part of a guy line which had been used to steady and manipulate the portside forward cargo boom when in use over the side of the ship (R. 61-62). The guy line consisted of a 30-foot wire pennant attached to the tip of the boom and to the upper block of a four-part tackle, the lower block being shackled to a pad eye on the main or well deck (R. 62, 101). The rounding in operation had not been begun until the boom had been cradled (R. 62, 90). After the boom had been cradled, the lower or after block of the tackle had been un-

shackled from the pad eye on the well deck and had been raised to the meccano deck, a structure built above the main or well deck (R. 101-102).

So raised, the lower block had been carried aft to the full span of the falls and, in petitioner's words, " * * * straightened out in line with the tip of the boom, so in taking in all the slack there would be no lines to foul up the guy line we were taking in. It would run free" (R. 101-102). Dudder, the fellow seaman charged with negligence by petitioner, was on the meccano deck holding the lower block and keeping the falls taut to prevent fouling (R. 101-102, 108). Petitioner was on the well deck hauling in and coiling the hauling end of the tackle (R. 102-105). As petitioner hauled in line, thus reducing the span of the falls, Dudder moved forward carrying the unshackled lower block, his rate of movement being determined by the rate at which petitioner hauled in the line (R. 102, 107). When petitioner last noticed Dudder, he was approximately 6 feet aft of the third 'thwartship beam on the meccano deck (R. 103). Petitioner was standing on the well deck approximately five feet forward of the third 'thwartship beam (R. 110).

Petitioner testified that he had been able to take in the rope freely at all times before the accident; that Dudder did not pull on the block so that the rope was jerked; that it would have been

impossible to pull in the rope if the falls between the blocks had not been kept in a taut position; that the lines between the blocks were lying over the second and third 'thwartship beams; and that the lines between the blocks were never lifted in the air any distance after the rounding in operation began.¹⁸ Petitioner then testified that he was struck while bending over to coil line. His contention is that Dudder negligently dropped the block, and that the block, swinging on the lines between it and the upper block with the third 'thwartship beam acting as a fulcrum, struck him on the back of the head (R. 299; Pet. 4).

We submit that there is nothing in this testimony to show any negligence on the part of Dudder. In fact, as observed by the court below, there is no evidence as to Dudder's activities at all. The testimony shows rather that a familiar operation was being performed under petitioner's control and that, at all times prior to the accident, petitioner was hauling and coiling, and the lines

¹⁸ This testimony is set out verbatim in the Statement, *supra*, pp. 8-10. Petitioner's testimony also shows that the taut lines between the blocks were about 4 feet inboard of a davit located about 2 or 3 feet aft of the forward or first 'thwartship beam (R. 108). The forward or upper block of the tackle involved in the rounding in operation was approximately at the first 'thwartship beam (R. 109), apparently still shackled to the pennant which ran to the tip of the cradled boom. The 'thwartship beams were approximately 12 feet apart (R. 103).

were taut and running free.¹⁹ Since, as noted by the court below (R. 319), the force of petitioner's pull on the hauling end of the tackle would be multiplied at Dudder's end at least 3 or 4 times the force exerted, we may draw an inference from petitioner's testimony that the block was jerked from Dudder's hands. Whether such an inference need be drawn or not is immaterial. The point is that no inference as to Dudder's share in

¹⁹ The exact time interval between petitioner's last glance at Dudder and the falling of the block is not stated in the record. However, it seems clear from the testimony that substantially no time intervened. At the time petitioner last noticed him, Dudder was on the meccano deck six feet aft of the third 'thwartship beam, moving forward as petitioner hauled and coiled (R. 102, 103, 105, 107). Since Dudder was holding the block and facing forward, there must have been somewhat less than six feet of line between him and the third 'thwartship beam. Petitioner was standing on the well deck, apparently about five feet forward of the third 'thwartship beam. There is approximately six feet between the well deck and the meccano deck. To drop from Dudder's hands, swing in an arc on the third 'thwartship beam, and hit petitioner would require the amount of rope which ran between the third 'thwartship beam and the block held by Dudder at the time petitioner last noticed him. This accords with petitioner's testimony that the lines were taut and running freely at all times before the accident, and that he was hauling and coiling. Since Dudder was moving forward as petitioner hauled, if any substantial time had intervened between petitioner's last glance at Dudder and the falling of the block, the arc described by the falling block would not have reached petitioner. It should be noted that petitioner, who was following the usual practice at the hauling end of a rounding-in operation of hauling and coiling in almost continuous sequence, could not have hauled more than four or five feet at a time.

the operation can properly be drawn from petitioner's testimony.

Petitioner does not rely on the direct testimony offered in the district court but on other aspects of the record which, in our view, are in conflict with the direct testimony. The contention centers on a paragraph contained in the purser's accident report which states (R. 211): "Sailors were stowing the forward port side boom and the guy block was caught on a davit, one of the men cast it off and line and block fell striking this sailor on the back of the head, block causing a large cut on this man's scalp."²⁰ From this report, petitioner argues that the lines between the blocks (or the forward block itself) were caught on the davit mentioned in the accident report, and that accordingly the lines between the blocks were not taut (Pet. 22, 25). Not being taut, petitioner contends that he could not pull on the hauling end and that therefore a strong inference arises that he did not pull the block from Dudder's hands.

As we have mentioned above, the paragraph

²⁰ As stated above, fn. 10, *supra*, pp. 14-15; such a report as this is required by Marine Investigation Board Rules for the purpose of calling to the attention of the appropriate Coast Guard district the fact of a marine accident or casualty. The report contained in the record herein provides on its face for a \$300 fine " * * * if injuries are not reported at once * * *" (R. 262). It should be noted that the purser did not witness the accident here involved (R. 111).

from the accident report cannot be squared with petitioner's direct testimony. The davit referred to in the accident report was located approximately three feet aft of the first or forward 'thwartship beam (R. 108). The 'thwartship beams were approximately 12 feet apart (R. 103). The davit was thus approximately 27 feet forward of Dudder and 16 feet forward of petitioner. The forward block, not the block held by Dudder, was approximately at the first 'thwartship beam (R. 109) and was apparently still shackled to the pennant which ran to the tip of the cradled boom. Petitioner testified, as we have shown above, that he was able to take in rope freely at all times before the accident. He further testified that the lines between the block held by Dudder and the forward block were about four feet inboard of the davit, and that the taut lines between the two blocks were at no time lifted in the air after the rounding in operation began (R. 107, 108). On the record, therefore, petitioner's testimony and the purser's report are in complete conflict on the precise point for which the petition argues.

Moreover, petitioner appears to argue from the purser's report, not for the purpose of establishing Dudder's negligence, but for the purpose of rebutting the strong inference raised by his own direct testimony that he jerked the block from

Dudder's hands.²¹ He then argues that an " * * * unfavorable presumption * * * " should have been raised against the Government which, taken together with his own testimony, required judgment in his favor (Pet. 34). As we stated at the outset, *supra*, p. 24, the rule of proof thus urged is identical with that which the law now places on bailees in possession upon proof of damage.

Petitioner here reaches his result by invoking the doctrine of *res ipsa loquitur* in a situation which contains none of the elements which justify the use of that rule. In this connection, we believe that petitioner places improper reliance on this Court's decision in *Jesionowski v. Boston & Maine R. Co.*, 329 U. S. 452. He apparently invokes only one aspect of that case, namely, the

²¹ In connection with his argument on the purser's report, petitioner also refers to a statement which he signed at the time that he executed the release which was set aside by the district court (Pet. 22). This statement would seem to be of no evidentiary value in view of petitioner's specific testimony. Petitioner also refers to a colloquy between Government counsel in the district court and Judge Cavanah, contending that the colloquy constituted an admission of negligence (Pet. 35; R. 299). The colloquy, which took place after Judge Cavanah had given his decision (R. 295), was part of an effort by Government counsel to obtain specific findings (R. 298). It seems clear that the discussion merely related to the nature of the findings which were being sought from the court. Moreover, the substance of the colloquy adds nothing to the fact, which is amply clear, that the block held by Dudder struck the petitioner.

holding that the jury might justifiably have found that the injury there involved had not been caused by activities of the plaintiff's intestate. Once the jury, appropriately instructed, made such a finding in the *Jesionowski* case, the situation remaining contained all of the usual elements which permit the inference of negligence from " * * * unusual happenings growing out of conditions under a defendant's control. * * * " 329 U. S. at 454. Here, even if it be assumed that the proof supports an inference that petitioner did not, by his own conduct, cause the block to fall, the remaining situation does not contain the elements necessary to justify the application of the *res ipsa loquitur* doctrine.²² *San Juan Light Co. v. Re-*

²² Petitioner's counsel raises for the first time in this Court a contention that the meccano deck was not a safe place to work and that the Government failed in its duty to carefully supervise the operation (Pet. 24); that the decision in this case becomes of special significance because it involves work "about a 'Maccano' deck" (Pet. 11). There has been no contention or allegation in either court below that the meccano deck had anything to do with the accident here involved and petitioner specifically testified that the accident did not result from any defective appliance (R. 115). There is absolutely nothing in the record with regard to the nature of a meccano deck beyond the bare description of the deck and the fact that the outside edge or angle iron is studded with pad eyes which make walking difficult (R. 109-110). This testimony has no relevance herein since Dudder was not walking on the angle iron but on a longitudinal beam (R. 102-103). Petitioner's reference to the meccano deck is obviously an effort to supply an essential requisite of the usual *res ipsa loquitur* rule which is here absent.

quena, 224 U. S. 89, 98-99. This case is one in which exclusive reliance is made on a specific charge of the negligence of Dudder, a fellow servant, not upon any negligence in a "condition under defendant's control." Only Dudder's negligence was alleged, and the proof adduced by petitioner was intended solely to support that allegation. Petitioner specifically negated any contention that his injury resulted from a defective appliance. The use of the rule of *res ipsa loquitur* in the situation thus presented would, as we have said, throw the burden of proof on the defendant in all Jones Act cases which are founded on the specific negligence of a fellow servant.

This case presents no proper occasion for such an extension of the *res ipsa loquitur* rule. Petitioner's contention is not made because of any inherent characteristic of his maritime calling (cf. *Cortes v. Baltimore Insular Line*, 287 U. S. 367, 377), or because of any extraordinary circumstances surrounding the accident (*San Juan Light Co. v. Requena*, 224 U. S. 89, 98-99; *Sweeney v. Erving*, 228 U. S. 233, 240), but is made rather to fill in the gap in his proof which resulted from his decision not to prove specific negligence in the ordinary way (R. 316).²³ We

²³ Dudder was obviously the best witness to prove petitioner's case. Petitioner's counsel states that he knows but cannot reveal the details of the accident, attributing this inability to the opinion of the court below (Pet. 22). As we have

submit that the judgment of the court below should be affirmed.

II

THE COURT BELOW WAS NOT BOUND BY THE "TWO COURT" RULE OR BY THE "PLAIN AND MANIFEST ERROR" RULE

Petitioner contends that the court below was bound by the decision of two district court judges on the issue of negligence (Pet. 32-33). He argues that Judge Hollzer, who heard the case but died before it was decided, had reached the same conclusion as that reached by Judge Cavanah to whom the case was submitted for decision on the written transcript. In support of this contention, petitioner refers to the signature of Judge Hollzer on the pre-trial stipulation, and discussions on the admissibility of the purser's report. We see no substance to this contention and do not believe that it requires discussion. The pre-trial stipulation expressly reserved the question of negligence. The observations of the judge on the purser's report were mere comments on its admissibility.

shown above (fn. 17, *supra*, p. 25), counsel for both parties participated in taking Dudder's deposition and stipulated that it was available to both parties and could be offered by either party. It should be noted that petitioner's assertion, that the Government had knowledge with regard to the circumstances of the accident and that he did not, is supported only by record references to the purser's accident report (Pet. 23, 34), which named Dudder as the witness to the accident (R. 264).

Petitioner also contends (Pet. 18, 33-34) that the court below erred in holding that " * * * the findings of the trial court do not come * * * encased in their usual armor * * * " in view of Judge Hollzer's death and because the appeal was in admiralty (R. 317).. We submit that this contention is without merit.²⁴ An appeal in admiralty is traditionally stated to be a trial *de novo*. *The Ariadne*, 13 Wall. 475; *Reid v. Am. Exp. Co.*, 241 U. S. 544, 548. Variations have been drafted on this rule by decision and by the admiralty rules promulgated by this Court. *Matton Oil Transfer Corporation v. The Dynamic*, 123 F. 2d 999, 1,000 (C. C. A. 2); *The Marguerite*, 140 F. 2d 491, 495 (C. C. A. 7); *Matson Nav. Co. v. Pope & Talbot*, 149 F. 2d 295, 298 (C. C. A. 9), certiorari denied, 326 U. S. 737; *The Ernest H. Meyer*, 84 F. 2d 496 (C. C. A. 9), certiorari denied, 299 U. S. 600.²⁵ These variations are based on the

²⁴ For the purpose of this point, we assume that Judge Cavanah made findings. In fact, his only finding is in the language of petitioner's allegation of negligence and states the conclusion that petitioner " * * * was struck by a * * * block, which was negligently and carelessly dropped by a fellow seaman * * * " (R. 5, 43).

²⁵ Admiralty rule 46½ (281 U. S. 773), requiring the trial court to make findings of fact and conclusions of law, as in ordinary civil action, requires that due weight be given "to the findings of fact made by the trial judge, who has had the opportunity to see the witnesses as they testified and thus determine the truth of disputed testimony in ways not open merely on inspection of a printed appellate record." *Matton Oil Transfer Corporation v. The Dynamic*, 123 F. 2d at 1,000.

assumption that all or a substantial portion of the evidence was heard in open court; the findings of a trial judge who thus saw and heard the witnesses are to be given considerable respect. However, in this case, Judge Cavanah neither saw nor heard the witnesses and Judge Hollzer made no findings. In these circumstances, it is well settled that the court below was free to review the record and to draw its own conclusions. *Alioto v. Imahashi*, 115 F. 2d 324 (C. C. A. 9); *The Ernest H. Meyer*, *supra*; *New Orleans Coal & Bisso Towboat Co. v. United States*, 86 F. 2d 53, 55-65 (C. C. A. 5). Moreover, we consider it doubtful that the point is open to petitioner in this Court. As pointed out above, fn. 13, *supra*, p. 17, petitioner urged in the court below that it was too well settled to require citation of authority that an appeal in admiralty was a trial *de novo*.

III

PETITIONER'S REJECTION OF MARINE HOSPITAL TREATMENT BARS HIM FROM RECOVERING MAINTENANCE AND CURE

Petitioner contends that he is entitled to an award to cover the cost of maintenance and cure in addition to the damages allowed by the district court. Entirely apart from the questions heretofore argued, it is clear that the courts below were correct in denying him this additional recovery.

The obligation of the ship and its operator is to furnish the seaman maintenance and cure, not

to reimburse him for care and cure of his own selection.

It is settled law that the ship and its operator fully discharge the duty to furnish maintenance and cure by offering the seaman treatment in a Marine Hospital, and that a seaman by refusing to accept treatment therein waives all further rights against his employer. *The Bouker No. 2*, 241 Fed. 831, 835 (C. C. A. 2), certiorari denied, 245 U. S. 647; *The Santa Barbara*, 263 Fed. 369, 371 (C. C. A. 2); *Cummins v. Wry*, 10 F. 2d 408 (C. C. A. 3); *Marshall v. International Mercantile Marine Co.*, 39 F. 2d 551 (C. C. A. 2); *The Saguache*, 112 F. 2d 482 (C. C. A. 2); *Van Camp Sea Food Co. v. Nordyke*, 140 F. 2d 902 (C. C. A. 9); *Bailey v. City of New York*, 153 F. 2d 427 (C. C. A. 2); *United States v. Loyola*, 161 F. 2d 126 (C. C. A. 9); *Stewart v. United States*, 25 F. 2d 869 (E. D. La.). This rule was implicitly approved in *Calmar S. S. Corp. v. Taylor*, 303 U. S. 525, where this Court said [p. 531]:

* * * Moreover, courts take cognizance of the marine hospital service where seamen may be treated at minimum expense, in some cases without expense, and they limit recovery to the expense of such maintenance and cure as is not at the disposal of the seaman through recourse to that service. *The Bouker No. 2* [241 Fed. 831], 835; *Marshall v. International Mercantile Marine Co.* [39 F. 2d 551], 553, and cases cited.

Petitioner apparently concedes the validity of this rule, for as to this point he contends that because the Public Health Service officials "acquiesced,"²⁶ in petitioner's desire to go to his old home in Texas for a rest there was no such refusal of Public Health Service hospitalization as to discharge respondent from liability (Pet. 27). The court below rejected this contention, however, and found that petitioner had refused the proffered hospitalization (R. 329).

This finding by the court below that petitioner had refused hospitalization is fully sustained by the record. After remaining in the Pacific Palisades Seamen's Rest Center for the maximum time permitted by its rules, petitioner was discharged with a diagnosis of post concussion syndrome, the medical report of the Rest Center recommending continued treatment at the U. S. Public Health Service in San Diego (R. 118, 250). During the time between his discharge from the Rest Center and his reporting to the

²⁶ If petitioner is taken literally in his use of the term "acquiesce" then his argument involves a *non sequitur*, since "acquiesce" means "to accept or comply tacitly or passively, without implying assent or agreement; to accept as inevitable or indisputable." Webster, *New International Dictionary* (2d ed. 1936). Respondent contends that, as the Public Health Service doctors could not require petitioner to follow their advice, they necessarily acquiesced when he declined to go to the hospital. It is assumed that petitioner uses the term "acquiesce" intending it to mean "agree," and respondent's argument will be based on this assumption.

Public Health Service at San Diego, petitioner spent several days in bed at home (R. 119), and when he did report to the Public Health Service the doctors there advised further hospitalization in the Marine Hospital at San Francisco (R. 251, 119-120). In spite of the persistence of the symptoms of which he had been complaining, and the fact that even after he had left the Rest Center these symptoms had compelled him to take to his bed for a time, petitioner declined the hospitalization, stating that he "would rather not go" (R. 120). Apparently it was at this time that petitioner stated his intention to make a trip to a ranch in Texas which was owned by the family, and was told by the Public Health Service officials in San Diego to visit the office of that Service in Galveston (R. 119, 122). Since the Public Health Service officials could not compel petitioner to enter a hospital, there is clearly no basis for assuming that they agreed to his plan to take a rest on the Texas ranch and receive out-patient service from the Galveston office as an alternative treatment to the hospitalization which they advised. Even in petitioner's testimony there is nothing to indicate that they accepted and agreed to this plan as a substitute for the treatment proposed by them, nor is there any indication that petitioner's refusal to go to the hospital was based on anything other than his desire to treat

himself as he saw fit (R. 119-122).²⁷ In any event, whatever the Public Health Service officials at San Diego may have said, the fact remains that when petitioner went to the Public Health Service at Galveston he was advised to enter the Marine Hospital there, and upon his refusal to do so he was advised to enter the near-by Public Health Service Rest Center at Kittiwake, which he also refused to do (R. 254). Petitioner does not attempt to reconcile this positive evidence of his refusal of hospitalization with his theory that the Public Health Service doctors accepted the treatment which he prescribed for himself. We submit that such a reconciliation is impossible, and that the court below was clearly justified in finding, from these facts, that petitioner had voluntarily rejected hospitalization.

²⁷ Cf. *Tawgda v. United States*, 162 F. 2d 615 (C. C. A. 9), which holds that a seaman who left the Marine Hospital without the consent and against the advice of the attending physicians could not recover for maintenance and cure. Both *Moyle v. National Petroleum Transport Corp.*, 150 F. 2d 840 (C. C. A. 2), and *Rey v. Colonial Navigation Co.*, 116 F. 2d 580 (C. C. A. 2), relied on by petitioner (Pet. 27) are distinguishable on their facts, since it is clear in each case that the seaman left the Marine Hospital with the approval of the doctors and not against their orders and advice.

Even if petitioner had rejected treatment at the Marine Hospital because he preferred to be treated by a private physician, he could not recover the cost of such treatment. *The Santa Barbara*, 263 Fed. 369, 371 (C. C. A. 2); *United States v. Loyola*, 161 F. 2d 126 (C. C. A. 9). *A fortiori*, petitioner is barred from recovering here, since he took the rest cure on the Texas ranch which he himself prescribed (R. 121) in preference to the proffered hospital care.

which rejection, in and of itself, defeats his claim for maintenance and cure.

Moreover, petitioner's claim for maintenance and cure was rejected by both courts below on the ground that he had incurred no expense or liability in connection therewith. There is ample authority to support this disposition of his claim. *Field v. Waterman S. S. Corp.*, 104 F. 2d 849 (C. C. A. 5); *Carroll v. Moran T. & T. Co.*, 88 F. 2d 144 (C. C. A. 9); *Cummins v. Wry*, 10 F. 2d 408 (C. C. A. 3); *Robinson v. Swayne & Hoyt*, 33 F. Supp. 93 (S. D. Cal.); cf. *Calmer S. S. Corp. v. Taylor*, 303 U. S. 525, 531; *Bailey v. City of New York*, 153 F. 2d 427 (C. C. A. 2) and cases there cited.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below is correct and should be affirmed.

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DECEMBER 1947.

SUPREME COURT OF THE UNITED STATES

No. 138.—OCTOBER TERM, 1947.

Robert C. Johnson, Petitioner,	} On Writ of Certiorari	
v.		to the United States
The United States of America.		Circuit Court of Ap- peals for the Ninth Circuit.

[February 9, 1948.]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This case is here on a petition for a writ of certiorari which we granted because of the seeming misapplication by the court below of *Jesionowski v. Boston & Maine R. Co.*, 329 U. S. 452.

Petitioner was a seaman on S. S. *Mission Soledad*, a steam tanker owned and operated by the United States. He was on the main deck rounding in two blocks, an operation which followed the cradling of the boom. One block was attached to the outer end of the boom by a wire rope. The other block was being held by a shipmate, one Dudder, who stood above petitioner on the meccano deck, a structure of beams which had been erected on the main deck. Petitioner was taking in the slack by pulling on the free end of the rope which ran through the two blocks. As he pulled on the rope the two blocks were brought together. When that was done Dudder had to walk forward with the block he held at a rate of speed controlled by petitioner. The operation went forward smoothly. Petitioner would pull on the rope, Dudder would walk forward, and then petitioner would stop to coil the accumulated free line. Petitioner and Dudder had worked harmoniously, neither one jerking on the line nor interfering with the other's function. There was no fouling of the lines; the rope was taut and ran free.

(see 41 Stat. 525, 46 U.S.C. § 742)

We have only a partial account of how the injury to petitioner occurred. Dudder was not called. The only testimony we have is from petitioner and his version of the episode is uncontradicted. The block which it was Dudder's duty to hold (and which weighed 25 or 30 pounds) was permitted to fall; it hit petitioner on the head and caused the injury for which this libel *in personam* was filed under the Jones Act, 38 Stat. 1185, as amended, 41 Stat. 1007, 46 U. S. C. § 688. Dudder, as we have said, was standing above petitioner. It is not certain why the block fell. Petitioner was hit without warning. When hit, he was bending over coiling the line on the deck.

The rule of *res ipsa loquitur* applied in *Jesionowski v. Boston & Maine R. Co.*, *supra*, means that "the facts of the occurrence warrant the inference of negligence, not that they compel such an inference." *Sweeney v. Erving*, 228 U. S. 233, 240. We need not determine what the result would be if it were shown that petitioner was pulling on the rope when the accident happened. For the uncontradicted evidence is that he was not pulling on the rope but was bending over coiling it on the deck. A man who is careful does not ordinarily drop a block on a man working below him. Some external force might conceivably compel him to do so. But where, as here, the injured person is not implicated (*Jesionowski v. Boston & Maine R. Co.*, *supra*), the falling of the block is alone sufficient basis for an inference that the man who held the block was negligent. In short, Dudder alone remains implicated, since on the record either he or petitioner was the cause of the accident and it appears that petitioner was not responsible.

The Jones Act makes applicable to these suits the standard of liability of the Federal Employers' Liability Act, 35 Stat. 65, as amended, 53 Stat. 1404, 45 U. S. C. § 51. Thus the shipowner becomes liable for injuries to a sea-

man resulting in whole or in part from the negligence of another employee. See *De Zon v. American President Lines*, 318 U. S. 660, 665. And there is no reason in logic or experience why *res ipsa loquitur* is not applicable to acts of a fellow servant. See *Lejeune v. General Petroleum Corp.*, 128 Cal. App. 404; *Johnson v. Metropolitan Street R. Co.*, 104 Mo. App. 588, 592-593. True, the doctrine finds most frequent application in cases of injuries arising from instruments or properties under the employer's exclusive control. *San Juan Light & Transit Co. v. Requena*, 224 U. S. 89; *Jesionowski v. Boston & Maine R. Co.*, *supra*; *Lukon v. Pennsylvania R. Co.*, 131 F. 2d 327; *Sweeting v. Pennsylvania R. Co.*, 142 F. 2d 611. Inherent, however, in the negligence inferred in that type of case is an act or failure to act by an individual. While the acts of negligence underlying such accidents may reach higher into the management hierarchy than the one involved here, the Federal Employers' Liability Act compels us to go no higher than a fellow servant. See *Terminal R. Assn. v. Staengel*, 122 F. 2d 271.

No act need be explicable only in terms of negligence in order for the rule of *res ipsa loquitur* to be invoked. The rule deals only with permissible inferences from unexplained events. In this case the District Court found negligence from Dudder's act of dropping the block since all that petitioner was doing at the time was coiling the rope. The Circuit Court of Appeals reversed, 160 F. 2d 789, feeling that petitioner might have pulled the block out of Dudder's hands. It reasoned that although petitioner testified he was bending over coiling the rope when the block hit him, the concussion may have caused a lapse of memory which antedated the actual injury. The inquiry, however, is not as to possible causes of the accident but whether a showing that petitioner was without fault and was injured by the dropping of the block is the basis of a fair inference that the man who dropped

the block was negligent. We think it is, for human experience tells us that careful men do not customarily do such an act.

Petitioner presses here his claim for maintenance and cure which was rejected by both courts below. He was hospitalized by respondent for a number of weeks following the accident. He was then found unfit for sea duty and doctors of the Public Health Service recommended that he enter various government hospitals. He refused and went instead to live on the ranch of his parents. We need not decide whether an agreement between petitioner and the government doctors for out-patient treatment and rest at his home might be inferred. Cf. *Rey v. Colonial Navigation Co.*, 116 F. 2d 580; *Moyle v. National Petroleum Transport Corp.*, 150 F. 2d 840. For there is ample evidence to support the findings of the two lower courts that petitioner had incurred no expense or liability for his care and support at the home of his parents. See *Field v. Waterman S. S. Corp.*, 104 F. 2d 849. On that issue we affirm the Circuit Court of Appeals. On the issue of negligence we reverse it.

So ordered.

SUPREME COURT OF THE UNITED STATES

No. 138.—OCTOBER TERM, 1947.

Robert C. Johnson, Petitioner,	} On Writ of Certiorari	
v.		to the United States
The United States of America.		Circuit Court of Appeals for the Ninth Circuit.

[February 9, 1948.]

MR. JUSTICE FRANKFURTER dissenting in part.

What is this case? It is a suit by the petitioner, a seaman, for an injury sustained while working on a vessel owned and operated by the United States. Under existing law the United States is liable only if it failed in its duty of exercising reasonable care in safeguarding its employees—the United States is liable, that is, only if it was negligent. And it is up to the plaintiff to prove such negligence.

What is the plaintiff's claim here? It is that while the petitioner and a fellow seaman named Dudder were working together in an operation known as "rounding in" blocks to bring two blocks of a block and tackle together, somehow or other a block fell and struck the petitioner, who was operating on a deck below Dudder, on the head. The claim is that the block which hit petitioner was negligently released by Dudder and that the United States is responsible for Dudder's negligence. (The "fellow servant rule" is not a defense under the Jones Act which authorizes this suit. 38 Stat. 1185, as amended, 41 Stat. 1007, 46 U. S. C. § 688.) There were no witnesses to this happening besides Dudder and Johnson. The only sources of knowledge for ascertaining what actually happened—whether fault lay with Dudder or Johnson or with nobody, as the law determines fault—were the ac-

counts which Dudder and Johnson might furnish and such inferences as human experience could reasonably draw from the occurrence itself.

What evidence does the record disclose? Of the two available witnesses only one testified. That was the petitioner. It is accurate to state, therefore, that his version of what immediately preceded the injury was uncontradicted. But it is no less true that he was unable to furnish any evidence bearing on the cause of the happening.¹ His testimony has not established that it was the carelessness of Dudder that caused the block to fall out of Dudder's hand rather than a careless jerk of the rope by himself which caused such release. Dudder was available as a witness but he was not called. The United States in fact had Dudder's deposition taken before the trial, and it was placed at Johnson's disposal. Neither party, for reasons of its own, called Dudder as a witness or introduced his deposition.

What conclusions are to be drawn from the facts as they were developed at the trial? It is not the business of this Court to conduct the trial of a case or, even where a case is technically open here on the facts, to sit in independent judgment on the facts. If a case like this is to be allowed to come here at all, we sit in judgment on the proceedings in their entirety. This is a proceeding in Admiralty tried by a judge and not a jury. The trial judge, who heard the testimony and who was in the best possible position to weigh what he heard and

¹ Petitioner testified:

"Q. Now, when you were standing there just before the accident, in the last thing you knew before the accident happened, what were you doing?

"A. I was coiling the line on the well deck or the Maccano deck.

"Q. Standing up or bending over?

"A. I was bending over.

"Q. Then what happened?

"A. That is all I remember."

saw, died before he gave his view of the testimony. By agreement, the cause was then submitted for judgment by another district judge on the basis of the cold record. He decided for the petitioner. The United States then appealed to the Circuit Court of Appeals for the Ninth Circuit. Three other judges on the basis of the same dead record reversed the district judge. 160 F. 2d 789. The result is that on the issue whether the United States is liable because one of its employees was negligent—that is, whether Dudder in fact carelessly let the block slip out of his hands—one judge said yes, and three judges said no.

What is the applicable law? My brethren say the circumstances speak for themselves in establishing Dudder's negligence. This means that the three judges below should have found, and this Court must now find, that the record proves that the injury can only be explained by Dudder's carelessness—for the petitioner, it deserves repeating, must have established Dudder's carelessness in order to hold the United States liable. I agree that if the rule of *res ipsa loquitur* determines this case, the scope of that rule is found in *Sweeney v. Erving*, 228 U. S. 233, reaffirmed last term as a "decision which cut through the mass of verbiage built up around the doctrine of *res ipsa loquitur*." *Jesionowski v. Boston & Maine R. Co.*, 329 U. S. 452, 457. But these two sentences are a vital part of the *Sweeney* case: "*Res ipsa loquitur*, where it applies, does not convert the defendant's general issue into an affirmative defense. When all the evidence is in, the question for the jury is whether the preponderance is with the plaintiff." 228 U. S. at 240. Therefore, even if the rule of *res ipsa loquitur* is here relevant, it should not by itself sustain a finding for the petitioner, "for the reason that in cases where it does apply, it has not the effect of shifting the burden of proof." 228 U. S. at 238. Since we cannot tell from the record how the

injury to the petitioner occurred—it certainly was not established why the block fell—I cannot escape the conclusion that petitioner failed to sustain his burden of proving by a fair preponderance of the evidence that his injuries were attributable to the respondent's negligence. Cf. the *Jesionowski* case, *supra* at p. 454.

But I do not believe that *res ipsa loquitur* is applicable here. It is, after all, a "rule of necessity to be invoked only when necessary evidence is absent and not readily available." See Cooley, *Torts* (4th ed.) § 480. Here the evidence as to the cause of petitioner's injuries was admittedly available, and it would seem to follow that since what actually happened could have been adjudicated, it should have been adjudicated. Therefore, I would affirm the judgment of the court below but modify its mandate so that there may be a new trial on this issue and an adjudication based upon an adequate determination.

While a court room is not a laboratory for the scientific pursuit of truth, a trial judge is surely not confined to an account, obviously fragmentary, of the circumstances of a happening, here the meagre testimony of Johnson, when he has at his command the means of exploring them fully, or at least more fully, before passing legal judgment. A trial is not a game of blind man's buff; and the trial judge—particularly in a case where he himself is the trier of the facts upon which he is to pronounce the law—need not blindfold himself by failing to call an available vital witness simply because the parties, for reasons of trial tactics, choose to withhold his testimony.

Federal judges are not referees at prize-fights but functionaries of justice. See *Herron v. Southern Pacific Co.*, 283 U. S. 91, 95; *Quercia v. United States*, 289 U. S. 466, 469. As such they have a duty of initiative to see that the issues are determined within the scope of the pleadings, not left to counsel's chosen argument. See *New York Central R. Co. v. Johnson*, 279 U. S. 310, 318. Just as a Federal judge may bring to his aid an auditor,

without consent of the parties, to examine books and papers, hear testimony, clarify the issues, and submit a report, in order to "render possible an intelligent consideration of the case by court and jury," *Ex parte Peterson*, 253 U. S. 300, 306, and in so doing has the power to tax the expense as costs "necessary to the true understanding of the cause on both sides," *Whipple v. Cumberland Cotton Co.*, 3 Story 84, 86; he has the power to call and examine witnesses to elicit the truth. See *Glasser v. United States*, 315 U. S. 60, 82. He surely has the duty to do so before resorting to guesswork in establishing liability for fault.

Dudder's account of what happened surely could supplement Johnson's as a basis for recreating the events which led to Johnson's injury. Neither party saw fit to use his available testimony. Instead of entering judgment for the party who had the burden of proof and did not meet it, the trial judge should at least have called Dudder as the court's witness. As Judge Sibley observed in a case where witnesses who knew what actually happened had not been called to testify: "We think that the interests of justice would be served by a new and more orderly trial, which can easily be managed . . . Williams and Batson [the witnesses] certainly know the truth of the things in dispute. If neither party will risk calling a witness who knows important facts, it is in the power of the court to call and examine such a witness, in the interest of truth and justice, allowing both parties the right of cross-examination and impeachment." *Chalmette Petroleum Corp. v. Chalmette Oil Distributing Co.*, 143 F. 2d 826, 828-9.

Three courts and thirteen judges have now passed on this case when in good reason a situation like this ought never to get into court at all. The crux of the difficulty is that an industrial injury such as the petitioner suffered is as to interstate railroad employees and seamen still determined by the archaic law of negligence instead of

by a just system of workmen's compensation. Occurrences like the one now in controversy are inherent in industrial employment and to make liability depend on a finding of "negligence" is to pursue unrealities. England abolished negligence as the basis of liability fifty years ago. The States, long laggards in making law conform to the actualities of industry, have now, with only a single exception, supplanted the outmoded liability for fault by a rational system of workmen's compensation laws, and Congress has enacted compensation laws for the District of Columbia, federal employees, and for longshoremen and harbor workers. "It is reasonable that the public should pay the whole cost of producing what it wants and a part of that cost is the pain and mutilation incident to production." Holmes, J., in *Arizona Employers' Liability Cases*, 250 U. S. 400, 433. But so long as Congress sees fit to have liability for injuries by railroad employees and seamen based solely on proof of fault, it is not for this Court to torture and twist the law of negligence so as to make it in result a law not of liability for fault but a law of liability for injuries.

One cannot be unmindful that "the radiating potencies of a decision may go beyond the actual holding." *Hawks v. Hamill*, 288 U. S. 52, 58. Lower courts read the opinions of this Court with a not unnatural alertness to catch intimations beyond the precise *ratio decidendi*. A decision like this exerts an influence, however unwittingly, well calculated to lead lower court judges to avoid reversals by deciding compassionately for the plaintiff in these negligence cases confident that such decisions are not likely to be reviewed here.

I would have the cause remanded to the District Court for further proceedings in conformity with this opinion.

MR. JUSTICE JACKSON and MR. JUSTICE BURTON join in this dissent.